

## 108 CMR: DEPARTMENT OF VETERANS' SERVICES

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**108 CMR 2.00      GENERAL PROVISIONS**

**Section**

**2.01: Authority and Applicability**

**2.02: Definitions**

**2.01: Authority and Applicability**

(1) Scope of 108 CMR 2.00 through 11.00. 108 CMR 2.00 through 11.00 includes regulations and directives promulgated by the Department of Veterans' Services for the governance of its operations, including its relations with the veterans' agents in individual cities and towns.

(2) Authority. 108 CMR 2.00 through 11.00 is promulgated pursuant to the authority granted in M.G.L. c. 115, § 2.

(3) Code of Human Services Regulations. 108 CMR 2.00 through 11.00 is promulgated as part of the Code of Human Services Regulations, as defined and explained in 101 CMR 2.00. Unless specifically provided otherwise, 108 CMR 2.00 through 11.00 is governed by the policies and procedures set forth in 101 CMR 2.00.

(4) Severability. If any provision of 108 CMR 2.00 through 11.00 or its application is held to be invalid, such invalidity shall not affect other provisions or their application.

**2.02: Definitions**

Meaning of Terms.

As used in 108 CMR 2.00 through 11.00, unless the context requires otherwise, terms shall have the meanings given in 108 CMR 2.02.

Applicant is any person who is eligible to file for assistance under the provisions of M.G.L. c. 115.

Basic Time Units for Budgets. Where recipients' budgets are computed, the time unit used for the budget computation is the calendar month. A per diem computation is based on the number of days divided by 30. A computation of an applicant's monthly income is based on 4.3 weeks in a month.

Commissioner means the Commissioner of Veterans' Services of the Commonwealth of Massachusetts.

Continuous Unwholesome Habits means repetitive behavior which is self-destructive or destructive to others and for which a person fails to seek the necessary help to prevent its recurrence.

Department or DVS means the Department of Veterans' Services of the Commonwealth of Massachusetts.

Dependent means any person who satisfies the definition of "dependent" in M.G.L. c. 115, § 1 and 108 CMR 3.05(1) through (4).

Full-time Veterans' Agent means a veterans' agent as defined in M.G.L. c.115, § 1, and appointed pursuant to M.G.L. c. 115, § 3 and St. 1972, c. 471, who has an office at the Department of Veterans' Services in the city, town or district wherein he or she is employed and who, as the veterans' agent, works the normal business hours the town or city hall is open performing his or her duties pursuant to M.G.L. c. 115 and 108 CMR *et seq.*

Income means the amount of money or its equivalent received in exchange for labor or services, from the sale of goods or property, profit from investments, any money received pursuant to a retirement plan or pension, compensation from any source, gaming winnings, gifts, and loans (including payments made on behalf of the applicant or recipient).

Institution means any hospital, sanitarium, or wayfarers' lodge, boarding or rest home, or convalescent or nursing home, for the operation of which a license is required by law; any facility operated by an agency incorporated under M.G.L. c. 180 or any special act as a charitable corporation; and any facility operated by a municipal, county, state or federal government agency, commission or board, including the Soldier's Homes at Chelsea and Holyoke; any public or private place or portion thereof, providing services especially designed for the detoxification of alcoholics; an intermediate care center in a community which provides temporary residential accommodation, guidance, supervision, and personal adjustment services for a group of three or more sober alcoholics or detoxified drug dependent persons.

Military Service means active service, from which one has received an honorable discharge, by a male or female, including a nurse, in the Army, Marine Corps, Navy, Air Force, or Coast Guard of the United States, but does not mean active service for training purposes in the Army or Air National Guard, or active duty for training as a reservist in the Armed Forces. The term Military Service also includes Merchant Marines who served in armed conflict between December 7, 1941 and August 15, 1945, and who have received honorable discharges from the U.S. Army, Navy or Coast Guard.

Net Income From Earnings includes gross income less federal and state income tax withheld, compulsory retirement deductions and health and hospital payments.

Recipient is any person to whom or for whom financial and/or medical assistance is provided pursuant to M.G.L. c. 115. Recipient also means any dependent receiving benefits under M.G.L. c. 115 and 108 CMR 3.05(1) through (4).

Reside means to be present within a city or town of the Commonwealth notwithstanding the lack of present abode, with no present intention of definite and early removal, but not necessarily with the intention of remaining permanently; provided, however, that any such person who enters the Commonwealth solely for the purpose of obtaining veterans' benefits shall not be considered to reside in the Commonwealth; and, provided further, that an applicant lacking a present abode shall be required to provide an affidavit stating his or her identity, his or her last place of residence, and his or her intention to establish an abode within the city or town in which he or she applies.

Suspension and Termination mean the discontinuance of veterans' benefits.

VA means the United States Department of Veterans Affairs.

Veteran means any person who satisfies the definition of "veteran" in M.G.L. c. 115, § 1.

Veterans' Agent means any person appointed pursuant to M.G.L. c. 115, § 3 and St. 1972, c. 471, if applicable.

Voluntary Unemployment means unemployment brought about by one's own acts or failure to act.

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## **108 CMR 3.00: BENEFITS ELIGIBILITY**

### **Section**

#### **3.01: Determination of Eligibility**

#### **3.02: Discretionary Veterans' Benefits**

#### **3.03: Military Service Qualifications**

#### **3.04: Massachusetts Residence Qualifications**

#### **3.05: Eligible Dependents**

#### **3.06: Disqualification from Eligibility for Benefits**

#### **3.07: Supporting Documents for Benefits Application**

#### **3.01: Determination of Eligibility**

(1) Residence. The veterans' agent shall make the initial determination of the place of residence of an applicant for veterans' benefits. The Commissioner shall decide all controversies among towns, or between an applicant and a veterans' agent, regarding the place of residence of an applicant for veterans' benefits.

(2) Other Criteria of Eligibility. The veterans' agent shall make the initial determination regarding the eligibility of an applicant for veterans' benefits. The Commissioner shall decide all controversies between an applicant and a veterans' agent regarding the applicant's eligibility. The decision of the Commissioner, except in controversies over residence, may be appealed by the applicant or the veterans' agent in accordance with 108 CMR 8.00.

(3) Veterans' Agent's Determination and Recommendation. The veterans' agent shall determine an applicant's eligibility and need for benefits on the basis of information obtained from the applicant and through the agent's own investigation. The veterans' agent then shall make a recommendation on the type and level of benefits, if any, which shall be granted to the applicant. The veterans' agent shall not deny an application for benefits on the ground that it does not present a situation conforming to a pattern for which there are predetermined standards of assistance. The determination of a veterans' agent that an applicant is not eligible for or does not need veterans' benefits shall be supported by adequate evidence. The determination and recommendation of the veterans' agent shall be made available in writing to the applicant and shall include facts supporting the determination and recommendation and reference to the applicable statute or regulations.

#### **3.02: Discretionary Veterans' Benefits**

Pre-application Veterans' Benefits. The Commissioner may, on recommendation of the veterans' agent, authorize or approve the payment of veterans' benefits for not more than 60 days prior to the date of the application, if the necessity therefor has been caused by serious accident or illness to the applicant or to one or more dependents of the applicant.

### **3.03: Military Service Qualifications**

(1) Military Service Requirement. Military service means active service in the Army, Marine Corps, Navy, Air Force, or Coast Guard of the United States or by members of the Merchant Marines who served in armed conflict between December 7, 1941 and August 15, 1945, and who have received discharges from the U.S. Army, Navy or Coast Guard; it does not include active duty for training purposes in the Army or Air National Guard, or active duty for training as a reservist in any branch of the Armed Forces. Discharges must have been under honorable conditions.

(2) Terms of Military Service Required. An applicant shall have satisfied the military service requirement of 108 CMR 3.00 if his or her active service included service during one of the following campaigns. For each campaign, there is listed the minimum duration of active service and the period during which at least one day of campaign service must have occurred.

(a) Spanish War, Philippine Insurrection, China Relief Expedition.

Minimum service: 90 days, at least one of which was during the campaign period and receipt of campaign medal

Campaign period: February 1, 1898 - July 4, 1902

(b) Mexican Border Service.

Minimum service: 90 days, at least one of which was during the campaign period

Campaign period: June 13, 1916 - February 3, 1917

(c) World War I.

Minimum service: 90 days, at least one of which was during the campaign period

Campaign period: April 6, 1917 - November 11, 1918

(d) World War II.

Minimum service: 90 days, at least one of which was during the campaign period

Campaign period: September 16, 1940 - December 31, 1946

(e) Korean War.

Minimum service: 90 days, at least one of which was during the campaign period

Campaign period: June 25, 1950 - January 31, 1955

(f) Vietnam (First Part).

Minimum service: 180 days, at least one of which was during the campaign period.

Campaign period: February 1, 1955 - August 4, 1964

(g) Vietnam (Second Part).

Minimum service: 90 days, at least one of which was during the campaign period.

Campaign period: August 5, 1964 - May 7, 1975

(h) Lebanon.

Minimum service: 90 days, at least one of which was during the campaign period  
and receipt of campaign medal

Campaign period: August 25, 1982 - undetermined

(i) Grenada.

Minimum service: 90 days, at least one of which was during the campaign period  
and receipt of campaign medal

Campaign period: October 25, 1983 - December 15, 1983

(j) Panama.

Minimum service: 90 days, at least one of which was during the campaign period  
and receipt of campaign medal

Campaign period: December 20, 1989 - January 31, 1990

(k) Persian Gulf.

Minimum service: 90 days, at least one of which was during the campaign period

Campaign period: August 2, 1990 - undetermined

(l) Special Campaigns.

Minimum service: 90 days, at least one of which was during the campaign period  
and receipt of campaign medal

Nicaraguan	1912
Haitian	1915
Dominican	1916
Mexican Service	1916

Vera Cruz	1916
Second Nicaraguan	1926-1933
Yangtze River	1930-1932
Second Yangtze River	1937-1939

(m) Minimum Service Exception. It is not necessary that an applicant have completed the minimum service for wartime campaign if he or she served some time in the campaign and was awarded the Purple Heart, or suffered a service-connected disability, or died in the service under conditions other than dishonorable.

**3.04: Massachusetts Residence Qualifications**

(1) Applicants in Institutions. Except as provided for in 108 CMR 3.04(1)(a) and (b), the city or town in which an applicant resided immediately prior to his or her entering an institution is his or her place of residence for the purpose of an application for benefits. That same city or town shall be liable for all benefits granted to the applicant, including the costs of his or her care in the institution. The city or town in which the institution is located shall not be liable for the applicant's benefits unless it also qualifies as the applicant's last place of residence.

(a) Any person who resides for a period of 12 months or more in an institution which is an intermediate care center as described in 108 CMR 2.02 shall be deemed to be a resident of the city or town in which such intermediate care center is located unless he or she furnishes evidence from a medical doctor, psychologist, or certified counselor that it is necessary for the resident to continue to receive the health care services provided at the intermediate care center.

(b) Any person who resides in said intermediate care center for a period of 24 months or more will be deemed to be a resident of the city or town in which such center is located.

(2) Veterans Affairs Foster Home Program. A veteran who leaves a VA facility and is placed in a home, under the Foster Home Program administered by the VA, shall be considered a resident of the city or town where he or she resided immediately prior to entering the VA facility.

(3) Outpatients at Veterans Affairs Hospitals. If a veteran who is discharged from a VA hospital and subsequently takes up residence in the city or town where the hospital is located for the primary purpose of receiving outpatient treatment at the hospital, applies for veterans' benefits, his or her place of residence shall be deemed to be the city or town where he or she resided immediately prior to entering the VA hospital.

(4) Veterans Attending Educational Institutions. An applicant attending an educational institution and living in housing either on or off campus shall be considered a resident of the city or town where he or she resided immediately prior to entering the educational institution. A veteran attending an educational institution and living year-round in the municipality where the educational institution is located shall be considered a resident of that municipality.

(5) Children. An application for benefits by or on behalf of the eligible child of a veteran shall be filed in the city or town where the child resides.

(6) Separate Persons. Applicants who are legally or consensually separated shall file their applications for benefits in the city or town where each resides.

### **3.05: Eligible Dependents**

(1) Categories of Eligible Dependents. The following categories of persons shall qualify as dependents eligible to receive veterans' benefits.

(a) Spouse of the veteran

- (b) Widow/widower of the deceased veteran
- (c) Parent of the veteran
- (d) Any person who acted as a parent to the veteran for five years immediately preceding the commencement of the veteran's wartime service
- (e) Child of the veteran until his or her 18th birthday
- (f) Child of the veteran between 18 years and 23 years of age while the child is attending high school, an institution of higher learning or some other accredited educational institution provided that the family is in receipt of benefits under the provisions of M.G.L. c. 115.
- (g) Child of the veteran over 18 years of age who is mentally or physically unable to support himself or herself and was affected by the disability prior to his or her 18th birthday
- (h) Legally adopted children of the veteran, in categories 108 CMR 3.05(1)(e) through (g).

(2) Effect of Divorce on Eligibility. The spouse of a veteran shall lose his or her eligibility upon the issuance by the court of a "decree absolute"; the eligibility for benefits of a veteran's spouse shall not be affected by the issuance of a "*decree nisi*".

(3) Eligibility of Children of a Divorced Veteran. The eligibility for benefits of a veteran's children shall not be affected by any change in the veteran's marital status. In evaluating an application for benefits by or on behalf of the children of a divorced veteran, the veterans' agent shall take into account the ability of both parents to support the children. The eligibility for benefits of the children of a divorced veteran shall not be affected by the fact he or she lives with the parent who is not a veteran.

(4) Effect of Separation on Eligibility. The fact that a veteran is legally or consensually separated shall not, by itself, constitute a basis for denying benefits to the applicant. Among the factors which may be considered in deciding whether to grant benefits in such cases are the reasons for the separation, the degree of the applicant's compliance with any court order for support, and the ability of each parent to support himself or herself and any children.

### **3.06: Disqualification from Eligibility for Benefits**

(1) Discretionary Disqualification. The local veterans' agent may, and only after consulting with the DVS authorizer responsible for reviewing that agent's cases, disqualify the following categories of persons from eligibility for benefits. In all cases, the Commissioner has the authority to waive the disqualification.

(a) A veteran who has neglected to support his or her dependents.

(b) A veteran, or the dependent of a veteran, whose voluntary unemployment or continuous unwholesome habits has produced the need for benefits.

If all the circumstances of the case, including age, physical condition, skills, length of time unemployed, economic conditions, *etc.*, indicate that the applicant has not made, or is not making a good faith effort to obtain any type of employment for which he or she is reasonably suited, the local veterans' agent shall determine that the applicant is voluntarily unemployed.

When an applicant's benefits are to be suspended or terminated because of neglect to support his or her dependents, voluntary unemployment or continuous unwholesome habits, the veterans' agent shall send a Notice of Intent to the applicant at least 14 days before the issuance of a Notice of Action. The Notice of Intent shall be on a form prescribed by the Commissioner, and shall set forth the reasons for the intended action. This notice shall set forth the specific work search activities in which the applicant has been failing to engage and that continued failure to engage in such activities will result in the termination of veterans' benefits. If the veteran's work search continues to be inadequate, the veterans' agent shall send a Notice of Action in accordance with 108 CMR 8.02.

(c) A veteran who has received a dishonorable discharge from a National Soldiers' or Sailors' Home or from a Soldiers' Home in Massachusetts

(d) Unless the veterans' agent and the Commissioner both decide otherwise, the fact that an applicant has a criminal conviction will not disqualify the applicant.

(e) A veteran whose need for benefits is solely the result of his or her willful acts.

(2) Undesirable Discharge. An applicant who has received an undesirable discharge shall be presumed to be ineligible for benefits. The applicant shall be entitled to challenge

that presumption on the ground that the circumstances of the discharge were not dishonorable. The local veterans' agent shall assist the applicant in his or her challenge by helping him or her obtain from the military service in which he or she served either a statement of the circumstances of the discharge or a copy of any court-martial which may have lead to the discharge. A determination of eligibility will be made by the Commissioner.

(3) Unless the Commissioner decides otherwise, a dependent shall not be eligible for benefits if the veteran is ineligible.

### **3.07: Supporting Documents for Benefits Application**

(1) The veteran shall submit supporting documents to verify the military service, dependency status, and validity of marriage. The veterans' agent shall send copies of these documents, and any other documents requested by the DVS authorizer responsible for reviewing the local veterans' agent's cases, to DVS.

(2) Specific Supporting Documents Required. The local veterans' agent shall obtain a copy of the discharge or release record of the veteran upon whose military service the application is being made. The veterans' agent shall receive the identified documents from the following applicants:



<u>Applicant</u>	<u>Documents</u>
Single or married veteran	Discharge or release records only Marriage certificate if applicable
Divorced veteran	Divorce decree absolute Order for support
Separated veteran	Separation decree Order for separate maintenance Order for support
Spouse of a veteran	Marriage certificate
Child of a veteran	Birth certificate or adoption record with name of eligible veteran as parent
Widow/widower of a veteran	Marriage certificate Death certificate
Child of a deceased veteran	Birth certificate or adoption record with name of eligible veteran as parent Death certificate
Parent of a veteran	Birth certificate of veteran with name of parent
Person <i>in loco parentis</i> to a veteran	Public record or statements from the veteran or other knowledgeable people, showing that the applicant stood “in loco parentis” to the veteran for five years immediately preceding the veteran’s wartime service



## **108 CMR 4.00: INTERVIEW AND APPLICATION PROCEDURE**

### **Section**

- 4.01: Interview Guidelines**
- 4.02: Applicant Procedures**
- 4.03: Computer Match Program**

#### **4.01: Interview Guidelines**

The Commissioner shall establish interview guidelines by directive.

#### **4.02: Applicant Procedures**

(1) Right to File an Application. Every veteran and/or dependent of a veteran has a right to file an application for veterans' benefits. This right to file shall not be confused with a right to receive benefits. If the applicant has a valid discharge and proof of residence, an application must be taken by the veterans' agent.

(2) Legal Requirements for Application. An applicant for veterans' benefits is required by M.G.L. c. 115, § 4 to file with a veterans' agent in the city or town wherein he or she resides a written application in a form prescribed by the Commissioner.

(3) Form of Application. An application for veterans' benefits shall be made on Form VS-1, with the exception that a reapplication for benefits, after the previous application has been inactive for a period of up to six months, and so long as there has been no change in circumstances other than the applicant's financial needs, may be made on Form VS-21A. The original application and Form VS-21A shall be forwarded to the Commissioner within ten days. Veterans' agents shall forward a subsequent Form VS-21A within 30 days of the date of the request for benefits. Recipients of veterans' benefits shall complete a new, updated Form VS-1 after three consecutive years of receipt of veterans' benefits. The original of that Form VS-1 shall be forwarded to DVS. Each January, recipients shall provide proof of income and shelter expenses, which shall also be forwarded to DVS. Information provided on an application form shall be either typed or printed legibly. The date which appears on the application shall be the date of the applicant's first contact with the veterans' agent. The signed original of each form shall be submitted to DVS.

(4) Who May File an Application. The general rule is that the application shall be filed by the veteran or a dependent of the veteran, depending on who is seeking the veterans' benefits. The following are special cases or exceptions to the general rule:

- (a) If the applicant is unable, for good reason satisfactory to the veterans' agent, to file an application in person, another person may file the application in the applicant's behalf.
- (b) The guardian or conservator of an applicant, may file an application on behalf of the applicant, provided that the name on the application is that of the veteran or dependent seeking veterans' benefits.
- (c) A veteran, living with a spouse or children, shall file the application for the spouse or children.
- (d) When the veteran is hospitalized and benefits are sought for the spouse or children, the application shall be made in the name of the veteran.
- (e) A veteran, separated from his or her spouse, co-parent, or children, may file an application on their behalf in the city or town where the spouse, co-parent, or children reside.
- (f) When a dependent who is living apart from the veteran files an application for veterans' benefits, the veteran shall file information on his or her own eligibility and capacity to support the dependent in the city or town in which the dependent has filed an application. When the veteran does not voluntarily provide such information or is unable to do so, the veterans' agent shall attempt to obtain the information for the dependent.
- (g) Whenever the veteran or the head of household in whose name veterans' benefits are being received dies, the widow or eldest dependent child shall file a new

application on his or her own behalf.

(5) Time Deadline for Veterans' Agents Referral of Application. Within ten working days after the applicant files an application, the veterans' agent shall refer the application, with his or her recommendation for action, to the Commissioner. If the veterans' agent is unable to meet this deadline, he or she shall notify the Commissioner, stating the reasons for the delay. A copy of the veteran's DD Form 214, Certificate of Discharge or Release from Active Service, or other separation document must accompany the application. Requests for authorization and payment (Form VS-21A) not acted upon by the Commissioner within 90 days of submission shall create a rebuttable presumption of approval.

#### **4.03: Computer Match Program**

(1) Upon the written request from any veterans' agent, DVS shall:

- (a) verify by Department of Revenue computer linkup whether any applicant for or recipient of veterans' benefits is in receipt of wages or has a bank account; and
- (b) whether said applicant or recipient is in receipt of transitional assistance.

Requests shall include the applicant or recipient's name, social security number, and other data required to assure identification.

(2) Definitions.

Computer Hit means that after investigation, it has been proven that an individual whose name has appeared as a computer match, was in fact, receiving veterans' benefits while employed or had a bank account during the same quarter and the employment income derived from such employment or bank account was not reported.

Computer Match means that the name and social security number of an individual who was, or is, in receipt of veterans' benefits, has been matched with the name and social security number reported as being employed or has a bank account during a particular quarter of the year.

(3) Notification to Applicants. In accordance with the Fair Information Practices Act, every applicant who applies for veterans' benefits must be informed that information contained in the application (Form VS-1) for veterans' benefits may be submitted to the Department of Revenue and Department of Transitional Assistance for the purpose of including such information in a computer match, with the name and social security numbers of all persons employed in Massachusetts.

(4) Consent Notice

- (a) The veterans' agent shall give each applicant a computer match consent notice which the applicant, and any other adult individual for whom benefits are being requested, shall sign and date.
- (b) Each time a person applies or reapplies for benefits, this process must be repeated.

(5) Procedures to be Followed for Computer Hits. When the veterans' agent receives information that indicates that one or more persons who have been receiving veterans' benefits through the city or town have been matched by the computer as having been employed or having a bank account during the same period that they have been receiving benefits, and the income received from said employment or bank account was unreported, the veterans' agent is to follow procedures pursuant to directives issued by the Commissioner.

(6) Failure of Veterans' Agents to Comply with the Computer Match Program. Because the computer match program is mandated by law, every veterans' agent in every city or town in Massachusetts must participate in all phases of the program and must adhere to the regulations or directives issued by the Commissioner. Failure to do so may result in loss of reimbursement.

(7) Delay in Reporting Computer Matches. If a recipient is discovered as a "computer

hit", only those benefits received during the period of employment or while in possession of undeclared deposits will be included in calculating the amount of the refund.

(8) "Computer Hit" Cases in Refund Status. All recipients who are placed in refund status as a result of a "computer hit" will be subject to the provisions of 108 CMR 8.07(1) through (6) and 108 CMR 8.08.

(9) Waivers. Requests for waiver of refunds caused by the "computer hits" may be requested by recipients by submitting their requests to the veterans' agents. (See 108 CMR 8.07(5).) The Commissioner will consider these requests only after the veterans' agents make their recommendations in writing on Form VS-21A, accompanied by the applicant's written request. These requests will be considered on an individual basis.

REGULATORY AUTHORITY

108 CMR 4.00: M.G.L. c. 115.





## 108 CMR 5.00: DETERMINATION OF BENEFITS

### Section

#### 5.01: General Guidelines for Benefits Determination

#### 5.02: Budget Standards

#### 5.01: General Guidelines for Benefits Determination

(1) General Rule for Determination of Benefits. Only such amount shall be paid to or for any veteran or dependent as may be necessary to afford him or her sufficient relief or support and such benefits shall not be paid to any person who is able to support himself or herself or who is in receipt of income from any source sufficient for his or her support. The schedule of benefits shall be reviewed and revised periodically by the Commissioner and adjusted to assure that the veteran or dependent is paid benefits as may be necessary to afford him or her sufficient relief or support. In no case shall an applicant be approved for benefits if his or her income from employment exceeds the maximum allowable grant or his or her incentive to work may be destroyed. Nor shall an applicant be allowed to voluntarily terminate employment and remain eligible for veterans' benefits. In no case shall the applicant's budget exceed his or her average monthly income prior to receiving veterans' benefits, unless the Commissioner shall authorize otherwise.

(2) Repayment of Veterans' Benefits. The payment of veterans' benefits constitutes a grant of assistance to the veteran or his or her dependent. No agreement for the repayment of such benefits by the veteran or dependent shall be permitted except as provided in M.G.L. c. 115 and in 108 CMR 8.03 and 8.07.

(3) Calculation of Applicant's Budget. The veterans' agent shall prepare a budget setting forth the amounts of the applicant's financial needs in various categories, as described in 108 CMR 5.02. On the basis of this budget, and after taking into consideration alternative sources of income available to the applicant as described in 108 CMR 6.00, the veterans' agent shall make a determination of the amount of benefits which shall be paid to the applicant, notify him or her of the amount and date of payment, and issue a Notice of Determination to that effect as prescribed by DVS.

(4) Pre-approval Living Expenses. The veterans' agent shall, prior to the date of the Commissioner's approval of an applicant's application, grant to the applicant payments to meet his or her immediate basic living expenses, provided that the veterans' agent has obtained copies of the veteran's discharge record, has verified the applicant's residence, and has made a substantial effort to obtain other supporting documents. The payment

made under 108 CMR 5.01 shall not exceed the amounts specified for various categories in the budget guides as set forth in 108 CMR 5.02.

(5) Effect of Alternative Sources of Income on Benefits Determination. An applicant's receipt of, or access to, alternative sources of income insufficient for his or her support, shall not prevent him or her from receiving veterans' benefits to supplement same if determined necessary by the Commissioner. The total of alternative income and veterans' benefits shall not exceed the budget allowance unless the Commissioner shall authorize otherwise.

(6) Excessive Benefits. The veterans' agent may grant benefits to an applicant in excess of the amounts authorized or approved by the Commissioner. However, DVS shall not reimburse the amount by which the benefits payments exceed the Commissioner's authorization or approval.

(7) Duration or Permanency of Applicant's Need. A veterans' agent's decision on determination of benefits shall not distinguish between cases on the basis of the apparent permanency or duration of the applicant's need for veterans' benefits.

(8) Beginning and Termination of Benefits Payments. When the payment of benefits immediately follows the applicant's loss of employment or immediately precedes his or her finding employment, the following payment rules shall apply: If the applicant was paid on a weekly basis while employed, payments shall begin on the eighth day following the applicant's receipt of final wages. If the applicant was paid on a bi-weekly basis, payments shall begin on the 15th day following the applicant's receipt of final wages. Once benefits begin, they may not continue beyond the day prior to the applicant's first receipt of wages following new employment.

(9) Options Available to Applicant: EAEDC, AFDC, Veterans' Benefits. Pursuant to M.G.L. c. 117A, § 3, a single applicant, eligible for M.G.L. c. 115 veterans' benefits, is not eligible for M.G.L. c. 117A assistance, Emergency Aid for Elderly or Disabled Residents (EAEDC).

M.G.L. c. 118, § 9 allows an applicant with dependents to chose between benefits granted pursuant to M.G.L. c. 115 or Aid to Families with Dependent Children (AFDC) as provided by M.G.L. c. 118.

Pursuant to M.G.L. c. 115 § 4, any applicant for veterans' benefits may elect to receive medical assistance under the veterans' benefits program or under M.G.L. c. 118E (Medical Assistance). The veterans' agent shall assist the applicant in filing the application for medical assistance under M.G.L. c. 118E. Prior to the applicant's election of medical assistance under M.G.L. c. 115 or M.G.L. c. 118E, the veterans' agent with the approval of DVS shall advise the applicant and the Commissioner which program is economically more advantageous to the applicant and the municipality.

## **5.02: Budget Standards**

(1) Application of Budget Standards. In preparing a budget of an applicant's financial needs, pursuant to 108 CMR 5.01(3), the veterans' agent shall bear carefully in mind the budget standards defined in 108 CMR 5.02. The Department shall not reimburse the amount by which benefits granted to an applicant exceed these standards unless the Commissioner has authorized or approved the excess. As provided in 108 CMR 5.01(6), the Department shall never reimburse the amount by which the benefits payments exceed the Commissioner's authorization or approval.

(2) Budget Standards Chart. The budget standards chart which follows 108 CMR 5.02(2) (Table 1) is a summary presentation of the specified standards for different categories of benefits payable to different categories of applicants. Some of the benefits categories appearing on the chart, as well as other special categories, are described in 108 CMR

5.02(2)(a) and (b).

(a) If at the time of an application, a lessee or sub-lessee can submit proof that he or she is in fact sharing expenses with one or more people, that applicant is placed in budget 30 of the budget standards chart, and those items in the chart that pertain to household, such as rent and fuel, shall be divided equally among all paying members of the household, not to exceed the maximum allowable amount in the budget standards chart.

(b) If an applicant moves into an apartment or home, as a boarder or roomer, and the rent receipt or mortgage payment is in the name of someone other than the applicant, then the applicant is placed in budget 30. If an applicant for veterans' benefits in budgets 30 or 31 meets the standards set forth in 108 CMR 5.02(3), the leisure time allowance shall be added to the allowable grant.

TABLE 1  
BUDGET STANDARDS

BUDGET	DESCRIPTION	ALLOWABLE GRANT
30	Applicant living alone	\$465.00
31	Applicant and spouse	\$630.00
32	Institutional resident	\$155.00
	SPECIAL ALLOWANCES	
	(A) Children	\$250.00
	(B) Unheated shelter	\$300.00
	(C) Heated shelter	\$400.00
	(D) Leisure time	\$180.00
NUMBER OF ROOMS		FUEL ALLOWANCE
1		\$ 70.00
2		\$ 80.00
3		\$ 90.00
4		\$100.00
5		\$115.00
6		\$120.00
7 or more		\$130.00

Medicare Part B - 100% reimbursable (\$50.00)

TABLE 2  
BUDGET CATEGORY

CATEGORY	
Applicant Living Alone, Budget 30	Receives Allowable Grant Plus
(a) Paying rent/mortgage	Shelter allowance
(b) Living with others (108 CMR 5.02(2)(b))	No shelter allowance

(c) Paying rent/mortgage with children	Shelter allowance plus children allowance for each child
(d) Sharing expenses (108 CMR 5.02(2)(a))	Applicants share not to exceed budget standard
(e) Any of (a), (c) or (d) above paying fuel (108 CMR 5.02(2)(a))	Fuel allowance for number of rooms
Applicant and Spouse, Budget 31	
(a) Paying rent/mortgage	Shelter allowance
(b) Living with others (108 CMR 5.02(2)(b))	No shelter allowance
(c) Paying rent/mortgage with children	Shelter allowance plus children allowance for each child
(d) Sharing expenses (108 CMR 5.02(2)(a))	Applicants share not to exceed budget standard
(e) Any of (a), (c) or (d) above paying fuel (108 CMR 5.02(2)(a))	Fuel allowance for number of rooms
Institutional Resident, Budget 32	
(a) Any applicant as defined	Allowable grant for budget 32

(3) Leisure Time Allowance.

(a) Any applicant and/or spouse in receipt of social security; civil service annuity; state, county, city or town pension for which eligibility requirements are equal to social security disability, supplemental security income, Veterans Affairs total and permanent disability, Veterans Affairs widow's pension, or any retirement pension due to total and permanent disability shall be granted a leisure time allowance as provided for in the budget standards chart.

(b) A leisure time allowance shall not be granted to an applicant and/or spouse who is an inpatient in a medical facility or nursing home and who is receiving payment for personal needs.

(c) Leisure time allowances are limited to two per application (applicant and spouse).

(4) Shelter Allowance. Only the property which the applicant occupies as a dwelling shall be considered in determining shelter benefits. Proof of shelter expenses shall be submitted with each original Form VS-1. Additionally, proof of shelter expenses shall be submitted with each change of address.

(5) Renting. If the applicant is paying rent, he or she is entitled to the actual rent figure, not to exceed the maximum as listed in the budget guides.

(6) Single Family Home. If the applicant owns his or her own home, carrying charges are allowed in lieu of rent. Such carrying charges include only:

Principal only on one mortgage, unless otherwise authorized by the Commissioner

Interest only on one mortgage, unless otherwise authorized by the Commissioner

Taxes (current and betterment)

Water rates

Fire insurance premiums

Sewer charges

Reasonable maintenance costs

Allowance shall not exceed the maximum shelter figure.

(7) Multiple Dwelling. Income from a property which is occupied in part by the applicant as a year-round dwelling shall be counted as income to the applicant after the following deductions of carrying charges:

Principal only on one mortgage, unless otherwise authorized by the Commissioner

Interest only on one mortgage, unless otherwise authorized by the Commissioner

Taxes (current and betterment)

Water rates

Fire insurance premiums

Sewer charges

Reasonable maintenance costs

Allowance shall not exceed the maximum shelter figure.

(8) Single Home or Multiple Dwelling. (Not Occupied by Applicant). If the property is capable of producing income, or does produce income, it is considered business property, and the income produced shall be countable. The veterans' agent shall not, under any circumstances, compel the applicant to make a disadvantageous sale of his or her property.

(9) Shelter-allowance for Mortgage-free Dwelling.

(a) If an applicant inhabits and owns a mortgage-free dwelling, the shelter figure in his or her budget shall be calculated by adding the property taxes (current and betterment), water rates, fire insurance premiums, sewer charges, and reasonable maintenance costs actually paid with regard to the dwelling, and dividing the resulting total by 12. The figure which results from that division shall be the monthly amount paid to the applicant for shelter, not to exceed the allowable amount in the budget standards chart.



(b) Under normal circumstances, the applicant will use the 12 equal benefits payments to pay his or her tax, water, insurance, and sewer bills as they arise at irregular intervals during the year. In certain cases, where the veterans' agent has determined that the applicant's physical or mental condition may make it difficult to manage this transfer of funds, the veterans' agent may request of the Commissioner that the "room" or "rent" payments be made to the applicant at intervals and in amounts which coincide with tax, water, insurance, and sewer bills received by the applicant. The veterans' agent shall include with his or her request a full statement of the reasons therefor.

(10) Mortgage Arrearages. A veterans' agent shall not pay benefits for overdue residential mortgage arrearages, to an applicant who is otherwise eligible for ordinary and/or fuel benefits, unless he or she first provides the Commissioner with specific reasons supporting said payment and said payment is authorized or approved by the Commissioner. Any benefit paid in this respect shall be limited to principal, interest, and any assessed fees. Any arrearage payment shall be in accordance with DVS directives.

(11) Rental Arrearages to Prevent Eviction.

(a) A veterans' agent shall not pay benefits for overdue rent arrearages, to an applicant who is otherwise eligible for ordinary and/or fuel benefits, unless he or she first provides the Commissioner with specific reasons supporting said payment and said payment is authorized or approved by the Commissioner. Any arrearage payment shall be in accordance with DVS directives.

Such recipient shall be required to submit one of the following verifications of immediate eviction:

1. A notice to quit from a court or landlord.
2. A writ of summary process

A copy of this verification must be filed in the case record and a copy submitted to the Department.

(b) To prevent eviction, eligible recipients shall be granted a special payment provided the following conditions are met:

1. A written statement is provided indicating the monthly payment and the number of months the recipient is in arrears
2. The landlord agrees in writing that all eviction proceedings will be terminated before or upon receipt of written approval by the veterans' agent and will not be reinstated on the basis of any past or current tenant violations.
3. The applicant states in writing the number of months he/she has been in arrears and the amount of arrears
4. That the arrearages payment shall be either the full amount of the outstanding arrearages or four times the monthly rent, whichever is less

Such a rental arrearage payment shall be allowed only once, unless the Commissioner waives that limitation.

(12) Emergency Residence Repairs.

- (a) During each calendar year, a veterans' agent may grant an allowance to each applicant to cover the cost of emergency repairs to the applicant's dwelling or residence. The veterans' agent shall make such grants only as the repairs become necessary, but shall require submission of a cost estimate before the grant is made. The veterans' agent shall require that the applicant, after the repairs are completed, provide some proof that the repairs were carried out and paid for in a particular amount.
- (b) An applicant shall obtain the veterans' agent's approval of a cost estimate for all emergency residence repairs expected to exceed \$200.00 before the veterans' agent may grant a reimbursement of that cost.
- (c) The veterans' agent shall give special attention to applications for reimbursement of emergency residence repairs which are necessary to eliminate or prevent a verified health hazard, in accordance with DVS directives.

(13) Fuel.

(a) The veterans' agent shall grant fuel benefits only for the cost of heating the dwelling in which the applicant resides. The veterans' agent shall grant such fuel benefits in accordance with the monthly amounts specified for various size dwellings (by number of rooms) as previously indicated in Table 1, Budget Standards. Heated bathrooms shall be considered rooms.

(b) The veterans' agent shall grant the full monthly amount of fuel benefits for the months from September through May. If operation of the heating system is necessary to heat water for washing, bathing and cooking purposes during the months of June, July, and August, the veterans' agent shall grant a summer fuel allowance as provided in the budget standards.

(c) In certain cases, the applicant's income from other sources may be sufficient to meet ordinary living expenses, but insufficient to pay his or her fuel costs in addition to the living expenses. In such cases, the veterans' agent may grant fuel benefits to the applicant, but shall deduct from those benefits the amount by which his or her other income exceeds his or her ordinary living expenses.

(d) Some utility or fuel companies provide a special financing arrangement which amortizes the cost of heating over ten or 12 months of the year. If the applicant utilizes such an arrangement, the veterans' agent shall permit fuel benefits to be paid to the applicant according to that arrangement, provided that the total benefits paid during the calendar year do not exceed the maximum amount payable under the normal fuel benefits schedule.

(14) Moving Expenses.

(a) The veterans' agent must obtain the approval of the Commissioner before granting benefits to cover the expenses of moving an applicant's furniture, household furnishings, and other possessions. In the request for the Commissioner's approval, the veterans' agent shall include a statement of the reason for the applicant's move and an estimate, resulting from at least three quotes/bids.

(b) The veterans' agent shall not grant benefits to cover the expense of a move carried out by an uncertified mover or carrier, M.G.L. c. 159B, § 3.

(15) Personal Needs.

(a) If a need is demonstrated, adult applicants residing in hospitals, half-way houses, nursing homes, rest homes and foster homes are eligible to receive benefits payments for personal needs (budget 32).

(b) In the case of an application by a husband and a wife, one of whom is temporarily hospitalized, for a period not to exceed three months, and the other of whom has shown a need for benefits to cover ordinary living expenses, the veterans' agent shall prepare

a full budget for husband and wife, provided that personal needs benefits shall not be paid to the hospitalized person. In excess of three months temporary hospitalization, the budget for the non-hospitalized spouse should revert to budget 30.

(c) An applicant who is residing on a long-term basis in a state or other institution shall be paid personal needs benefits in the same amounts as any other applicant, provided that such payments shall be discontinued for as long as the accumulated and unspent personal needs funds, held by the applicant in his or her own account or by a third party (such as the institution) for the applicant's benefit, exceed three months worth of personal needs payments. The Department shall not provide reimbursement for personal needs payments made to an applicant while his or her accumulated, unspent personal funds exceed the equivalent of three months of payments.

(d) On every request for reimbursement of personal needs payments to an institutionalized applicant, the veterans' agent shall state the current balance in the applicant's accumulated personal needs funds account. The veterans' agent shall make each personal needs request cover no more than a three-month period.

(16) Medical Expenses. The veterans' agent shall use the following procedure in determining the income level below which an applicant shall be eligible to receive benefits payments to cover the medical expenses. The veterans' agent shall prepare a budget of ordinary living expenses for the applicant. In doing so, the veterans' agent shall make allowance for any actual rent or mortgage payments by the applicant, rather than the budget standard figure. The veterans' agent also shall include in the budget a standard fuel allowance, whether or not fuel payments are actually made, and regardless of the month in which the budget is prepared. Finally, the veterans' agent shall add 5% to that total budget amount. The sum of these allowances, inclusions and additions shall be equal to the amount of the applicant's income which shall be waived in determining the applicant's eligibility. Any excess of income will be the responsibility of the applicant unless waived by the Commissioner. If the aid requested is for a period not to exceed six months, the responsibility of the applicant will amount to the monthly excess multiplied by six. Notwithstanding this paragraph or any other provision of these regulations, an applicant who is eligible for medical assistance under M.G.L. c. 118E, shall have the right to elect medical assistance under M.G.L. c. 115; provided further, the applicant shall make an election only after being informed of the financial consequences, including the asset and income limitations under each program.

(17) Catastrophe. In the event that fire, flood, windstorm or any other natural disaster or catastrophe causes a loss of the applicant's dwelling, or otherwise creates unusual hardship for the applicant, the veterans' agent shall take immediate action to provide necessary food, shelter and clothing for the applicant. After the immediate emergency needs are met, the veterans' agent and the DVS staff member who monitors the veterans' agent's cases shall review the applicant's case to determine the needs, if any, for continued benefits. The veterans' agent shall direct the applicant to the appropriate local, state, or federal authorities for disaster assistance, if applicable.

(18) Pre-application Emergency. A veterans' agent may grant an emergency payment to an applicant before the applicant's application has been completed or approved by the Commissioner, provided that the veterans' agent has in his or her possession a copy of a proper qualifying military discharge for the applicant and has verified the applicant's place of residence. As soon as possible after making such an emergency grant, the veterans' agent shall complete the application and submit it to the Commissioner.

(19) Medical Insurance. In all cases, existing hospitalization insurance shall be kept in force for the recipient; and on new cases where the outlook is for an extended period of time, the veterans' agent shall consider payment of hospitalization insurance and advise the applicant that such insurance premiums will be allowed as a miscellaneous benefit.

The responsibility for obtaining such insurance lies with the applicant.

(20) Infant Benefits. The purpose of infant benefits is to provide a one-time payment for equipment needed to care for an infant. If the equipment is not available to the applicant from any other source, and if payment for the equipment is requested within the three months following the birth of the eligible infant, the following benefits may be granted at rates set by the Commissioner:

- (a) Payment for a crib and/or mattress for a newborn infant
- (b) Payment for a layette for a newborn infant

(21) Transportation Assistance. Transportation assistance is provided to those currently in receipt of veterans' benefits and who have requested such assistance to move outside the Commonwealth. The veterans' agent must obtain prior approval of the DVS authorizer responsible for reviewing that agent's cases before granting transportation assistance if the applicant indicates an interest in moving outside the Commonwealth and appears to meet the eligibility criteria.

(a) Eligibility for transportation assistance will be determined in accordance with the following criteria. The applicant must:

1. have a significant social, medical or financial problem which may be substantially alleviated by moving outside the Commonwealth
2. be currently in receipt of veterans' benefits
3. have insufficient resources of his or her own to move outside the Commonwealth
4. not have been a previous recipient of transportation assistance

- (b) The decision of the applicant to accept transportation assistance must be voluntary.
- (c) Transportation assistance is limited to the personal transportation of the applicant. The cost of moving household goods or furnishings, or costs for luggage or baggage in excess of the transportation carrier's stated limitations for personal effects or belongings, will not be authorized.
- (d) Transportation assistance is to be provided by the most cost effective surface method of transportation and may include an allowance for fuel in the case of an applicant who chooses to utilize his or her own vehicle.

REGULATORY AUTHORITY

108 CMR 5.00: M.G.L. c. 115.

**108 CMR 6.00: ALTERNATIVE SOURCES OF INCOME**

**Section**

**6.01: Deduction of Alternative Sources of Income**

**6.02: Assets**

**6.03: Liens**

**6.04: Assignments**

**6.01: Deduction of Alternative Sources of Income**

(1) General Rule. Except as provided otherwise by statute or regulation, the veterans' agent shall offset the applicant's needs budget in determining the amount of benefits to be paid the applicant.

(2) Applicant's Obligation to Report Income.

(a) The veterans' agent shall inform the applicant of his or her obligation to report to the veterans' agent all income received from other sources, including merchandise or services received in lieu of money.

(b) Self-employed Applicants. Benefits will not be paid to a self-employed applicant until a complete report on the finances of his or her personal business, preferably an auditor's statement from a person responsible for handling the company books, as well as copies of the most recent federal and state income tax returns, is submitted. Based on all the facts, the Commissioner will make a determination on eligibility. However, under no circumstances, will veterans' benefits subsidize a business.

(3) Applicant's Obligation to Utilize Alternative Sources of Income. As a prerequisite of eligibility to receive benefits payments, the veterans' agent shall require that the applicant file applications to receive any other types of benefits available to him or her, including but not limited to, VA compensation, non-service pension, Social Security, railroad retirement, Supplemental Security Income, workmen's compensation or private pension plans. Proof of application for those alternative benefits must be submitted to DVS. If the availability of such other benefits arises after the applicant has begun receiving veterans' benefits, the veterans' agent shall require the applicant immediately to file appropriate applications. The veterans' agent shall require the applicant to execute an assignment and/or agreement to reimburse as the circumstances may require. The veterans' agent shall explain the meaning of these documents to the applicant. Copies of these must be submitted to the Department with the Form VS-1.

(4) Income Deduction. The following income deductions table describes the types and



levels of income which shall be offset against or deducted from the budgeted needs of different categories of applicants.

TABLE 3  
INCOME DEDUCTIONS

APPLICANT	BUDGET	DEDUCTIONS
Veteran Spouse Widow/widower	Included	Total monthly income from any source to be deducted
Veteran (employed) Spouse (employed) Widow/widower (employed)	Included	Deduct \$200.00 from monthly net income received from employment Balance, plus total monthly income from any other source, to be deducted (\$200.00 maximum income disregard per family unit)
Children; applicant single or married but separated from spouse	Excluded	No deductions will be made
Children; applicant married, with either or both employed living in applicant's home.	Excluded	No deductions will be made
Children (dependent)	Included	Earned income of children attending high school will be waived
Children (dependent)	Included	Earned income of children attending college will be waived
Children (dependent)	Included	Income from VA, S.S., SSI, which is less than the budget, shall be deducted from the budget
Children (dependent)	Excluded	Income from VA, SS, SSI, which is greater than the budget, shall be waived
Roomer and boarder	Excluded	\$25.00 per month

Roomer	Excluded	\$15.00 per month
Relative in household on public assistance. If child under 18 or under 23 years of age and attending college	Exclude	No deduction

(5) Types of Income.

- (a) An applicant's monthly income shall be calculated by multiplying his or her weekly gross income by four and a third, and then subtracting federal and state income tax withheld, compulsory retirement reductions and health and hospital insurance payments.
- (b) A veteran's income from annuities received under the provisions of M.G.L. c. 115, § 6B, shall not be considered as income to be deducted in determining benefits payments.
- (c) Money which an applicant has received from the United States or the Commonwealth as a "bonus" for military service or enrollment shall not be considered as income to be deducted in determining benefits payments.
- (d) Profits earned by an applicant on property in which he or she resides which produces income shall be considered as income to be deducted in determining benefits payments, provided that the applicant's payments for principal and interest on a property mortgage, property taxes (current or betterment), fire insurance premiums, water, sewer, and reasonable maintenance costs shall be subtracted from these profits. An applicant shall not receive benefits payments to compensate for property losses. An applicant's profit from property shall be considered income even though the applicant is a full-time resident of a part of the property.
- (e) Payments made to an applicant from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange Product Liability Litigation, M.D.L. No. 381 (E.D.N.Y.) shall not be considered income or resources in determining veterans' benefits payments.

**6.02: Assets**

(1) Definition of Assets. For the purpose of 108 CMR 6.00, the term "assets" shall include, but not be limited to, bank deposits and accounts, corporate stocks, bonds, and other negotiable instruments. Assets shall not include life insurance policies in amounts which are not excessive for the applicant's needs. The proceeds from the sale of the home in which the applicant resides shall not be considered assets if they are used, within six months of the sale date, to purchase another home in which the applicant will reside. The value of bank accounts held in more than one name, one of which is the applicant's name, shall be apportioned equally among the co-holders of the accounts. Assets, upon application, are permissible up to the limits pursuant to 108 CMR 6.02: *Table 4*.

(2) Transfer of Income and/or Assets.

(a) Transfers for Less Than Fair Market Value.

1. If, within 36 months prior to applying for benefits, the veteran or dependent assigns or transfers any income and/or asset(s), in whole or in part, for less than its fair market value or places the income and/or asset(s) into an irrevocable trust, it shall be presumed that the assignment or transfer was made to obtain veterans' benefits unless the presumption is rebutted pursuant to 108 CMR 6.02(2)(a)2. If the presumption is not rebutted, or the transfer is prohibited by law, the veteran or dependent will be ineligible for veterans' benefits for that period of time calculated in accordance with 108 CMR 6.02(2)(c) and (d).

2. The presumption that an assignment, transfer or placement of income and/or an asset(s) for less than its fair market value was made for the purpose of obtaining veterans' benefits may be rebutted if the veteran or dependent establishes one of the following:

a. At the time of the transfer, he or she had sufficient assets or other income sources, including income from employment, to pay for his or her day-to-day living and medical expenses and the expenses of those persons he or she is legally obligated to support. This determination shall be based on the veteran's and dependent's average monthly expenses for the six months immediately preceding the date of transfer.

b. The transfer of the income and/or asset(s) was for self-support because the veteran's or dependent's income and asset(s) at the time of the transfer was insufficient to meet his or her day-to-day living and medical expenses and they were then met. Day-to-day living expenses are limited to expenses for shelter, fuel, utilities, and food and cannot exceed the greater of what the veteran or dependent was paying for those expenses prior to the date the income and/or asset(s) was transferred. Medical expenses are limited to health insurance premiums or health care treatment or services essential for the treatment of the

veteran or his or her dependents to the extent that such costs are not covered by any health insurance or Medicaid, and not incurred as the result of cosmetic surgery unrelated to illness, accident or surgery. It is presumed that rehabilitative therapies, pain management, personal care attendants, durable medical equipment, experimental treatments for serious illnesses and reconstructive surgeries as the result of disfiguring illnesses, accidents or operations constitute essential health care treatment. Expenditures which would presumptively not constitute essential health care treatment include those for vacations, recreational equipment such as swimming pools, extravagant items, and leisure activities.

c. The transfer of the income and/or asset(s) was made while the veteran or dependent was legally incompetent or as a result of undue coercion; provided, however, that the applicant must demonstrate that every reasonable effort has been made to recover the property by court action or by such other procedures as indicated by the circumstances.

d. The transfer of the income and/or asset(s) was the result of a legal action such as a court order, judgment, foreclosure, or delinquent tax sale. The applicant must provide evidence that the transfer of income and/or asset(s) was done exclusively for a purpose other than for obtaining veterans' benefits. A subjective statement of intent or of ignorance of the transfer rules is not sufficient. The applicant must provide objective evidence of one or more of the factors listed in 108 CMR 6.02(2)(b).

(b) Transfers for Fair Market Value or More.

1. If, within 36 months prior to applying for veterans' benefits, a veteran or dependent transfers income and/or an asset(s) for its fair market value or greater value and the transfer was for an extraordinary expense(s) and/or a vacation, it will be presumed that the transfer was made for the purpose of obtaining veterans' benefits. An item shall be considered an extraordinary expense if the following apply:

- a. The expense is not one which a reasonable person would normally incur.
  - b. The expense(s) exceeds 25% of the veteran's or dependent's average monthly gross income, for the six months immediately preceding the date of the transfer.
2. An item(s) shall not be considered an extraordinary expense if it is payment for:
- a. Health insurance premiums or health care treatment or services essential for the treatment of the veteran or his or her dependent. Expenditures which would presumptively not constitute essential health care treatment includes those for vacations, recreational equipment such as swimming pools or athletic equipment, extravagant items, and leisure activities.
  - b. Transportation; the lesser of the actual costs or \$250.00 per month and provided that such costs were not covered by any other source.
  - c. Replacement or repair of existing basic household furniture or the purchase of basic household furniture where the veteran or dependent family did not previously own such items, or the replacement or repair of existing, defective refrigerator, home heater, stove, oven, washer, and/or dryer, or the purchase of said appliances where the veteran or dependent family did not previously own such items.
  - d. Basic repairs of a dwelling owned and lived in by the veteran or dependent family member, exclusive of remodeling.
  - e. Court-ordered judgments, including alimony and/or child support.
  - f. Obligations to local, state and federal governments.
  - g. Obligations necessary for work, employment, education or job training.
  - h. The purchase of a prepaid funeral arrangement.

(3) Value of Transferred Income and/or Asset(s). If the income and/or asset(s) is considered to have been transferred to obtain veterans' benefits, the value shall be determined as follows:

- (a) Determine the fair market value of the transferred income and/or asset(s) as of the date of transfer.
- (b) Deduct from the fair market value:
  1. Any legal encumbrances attached to the transferred income and/or asset(s)

which were paid on or after the date of transfer.

2. Any compensation received that is in excess of the legal encumbrances.

(c) The result is the value of the transferred income and/or asset(s).

(4) Calculation of Period of Ineligibility. A period of ineligibility shall begin with the month in which the asset(s) was transferred. The number of months in such period shall be the lessor of the following:

(a) The number of months that result when the total value of the asset(s) transferred is divided by the monthly benefit to which the applicant would otherwise be entitled.

(b) 36 months.

(5) Education Trust Funds. In all cases, the veterans' agent shall conduct an investigation to determine whether an alleged educational trust fund is being used exclusively for that purpose. Among the factors which the veterans' agent shall consider are the original creator of the fund, the date the trust was created, whether the fund has been used for other than the stated purpose, whether the trust is an irrevocable trust, and whether the beneficiary is aware of the trust fund in his or her name. If the veterans' agent determines that the fund is a valid educational trust fund, it shall not be considered an asset.

(6) Asset Liquidity. In determining whether an applicant possesses sufficient assets to disqualify him or her from receiving veterans' benefits, the veterans' agent shall take into account the liquidity of the assets, that is, the ease with which they may be converted to cash. Generally, the less liquid the asset, the less it shall be considered as available to meet the applicant's immediate financial needs and, therefore, the less it shall be considered as a disqualifying factor. As soon as an asset has been converted to cash, it shall immediately be offset against the applicant's financial needs. The applicant shall be expected to take available steps to convert all assets which exceed the prescribed limits to cash in the most prompt and advantageous manner.

(7) Maximum Asset Allowances. The veterans' agent shall not grant benefit payments to an applicant who possesses assets which exceed the limits for various categories of applicants set forth in the following table of maximum asset allowances. If an applicant's assets exceed his or her allowance, the veterans' agent shall disqualify the applicant from receiving any benefits payments until the assets are spent down below the allowance limit, at which time the applicant may reapply for benefits.

TABLE 4  
MAXIMUM ASSET ALLOWANCE

Combined assets of a single applicant	\$ 1,600.00
Combined assets of a veteran and spouse	\$ 3,200.00
Combined assets of a veteran, spouse and one or more children, at \$100.00 per child	\$ 3,600.00
Combined assets of a widow, with a minor child, or children, \$800.00 for widow, \$100.00 per child	\$ 2,000.00
Combined assets of the veteran and spouse or veteran and one eligible parent	\$ 3,200.00
Combined assets of a veteran, spouse and eligible parent	\$ 4,800.00
Combined assets of a veteran, spouse and two eligible parents	\$ 6,400.00
Combined assets of the veteran and two eligible parents	\$ 4,800.00



Combined assets of a veteran, spouse, child or children, one eligible parent at \$100.00 per child	\$ 5,200.00
Combined assets of a veteran, spouse, child or children, two eligible parents at \$100.00 per child	\$ 6,800.00
Combined assets of a child, or children with no parents	\$ 2,000.00
When there is no life insurance, and application is for one person	\$ 3,200.00
When there is no life insurance, and application is for two or more dependents	\$ 7,000.00

**6.03: Liens**

(1) General Authority. Pursuant to M.G.L. c. 115, § 5A, the veterans' agent shall execute an instrument giving notice of a lien on any parcel of real estate in which a dependent mother or father receiving veterans' benefits has an interest in excess of \$1,500.00. The veterans' agent shall send the notice of lien by certified mail to the dependent mother or father and, at least three days later, Saturdays, Sundays and legal holidays excluded, shall record a notice of lien in the Registry of Deeds of the county, or the district if the county is divided into districts, in which the real estate is located. If the real estate is registered, the veterans' agent shall file the lien in the Registry District of the Land Court. Upon filing of the notice, this instrument creates a lien on behalf of the Commonwealth on only that part of the dependent mother or father's interest in excess of \$1,500.00 of the fair market value of the real estate.

(2) Enforcement of the Lien. The veterans' agent may enforce a real estate lien by filing a Petition in Equity in the Superior Court for the county where the real estate is located. In filing such a petition, the veterans' agent shall seek the legal advice of the corporation counsel, city solicitor, or town counsel, as the case may be. The veterans' agent shall not take steps to enforce a lien until both the dependent mother or father have died, and he or she has obtained the written permission of the Commissioner. In his or her discretion, the Commissioner may waive enforcement, in whole or in part, in order to avoid the undue hardship which the enforcement might cause.

(3) Prior Conveyance. If the dependent mother or father conveys her or his interest in real estate no more than two years prior to an application for veterans' benefits, she or he shall be deemed to have tried to avoid the provisions of 108 CMR 6.03 and shall be considered ineligible for such benefits. The provisions shall not apply if the conveyance was for an amount equal to or exceeding the fair market value of the real estate.

(4) Subordination. Upon prior approval of the Commissioner, the veterans' agent may enter into a written agreement with the dependent mother and father by which he or she consents to subordinate a lien obtained pursuant to 108 CMR 6.03. The Commissioner shall grant his or her permission for such a subordination only if the mortgagee is required to pay for necessary repairs to the real estate.

(5) Gold Star Exemption. The provisions of 108 CMR 6.03 shall not be applied to real estate owned by the mother or father of a person who was killed in action or died from service-connected disability incurred while he or she was in wartime military service with the Armed Forces of the United States.

(6) Dissolution of Lien. Upon the expiration of 20 years from the date of the recording of a real estate lien in the office of the Register of Deeds, wherein the real estate lies, such lien shall be dissolved and unenforceable. When a real estate lien becomes dissolved and unenforceable, the veterans' agent shall submit a Discharge of Real Estate Lien (Form VS-26) to the Commissioner and a copy to the Register of Deeds of the county, or district, if the county is divided into districts, in which the real estate is located.

(7) Failure to Discharge Lien. If a veterans' agent neglects or refuses promptly to refer the enforcement of a lien under 108 CMR 6.03 to the Commissioner, for his or her approval, or to bring a petition within the period specified by the Commissioner, the Commissioner shall thereupon bring the petition in his or her own name; and in such event, all proceeds shall be retained by the Commonwealth.

#### **6.04: Assignments**

(1) General Authority for Mandatory Assignment. Where the applicant's need for veterans' benefits is a result of the unemployment, accidental disability or illness of the applicant, and monetary remuneration is available to the applicant in the form of workmen's compensation, accident or health insurance, or damages resulting from legal action in tort, the veterans' agent shall take an assignment of that remuneration. The assignment operates as a lien on the monetary remuneration up to the total amount of veterans' benefits paid to, or on behalf of, the applicant. The veterans' agent may enforce the lien or

assignment by filing a petition in the district court for the city or town through which the benefits payments are made.

(2) General Notification of Assignment. The veterans' agent shall send a copy of the assignment to the applicant's attorney, to the prospective defendant's insurance company, and, if pertinent, to the Industrial Accident Board. The veterans' agent shall send the copy to the insurance company by certified or registered mail, return receipt requested.

(3) Notification and Form of Assignment, in Workmen's Compensation and Accident or Health Insurance Cases.

(a) In cases involving workmen's compensation or accident or health insurance, the veterans' agent shall send copies of the assignment to the Commissioner, the Industrial Accident Board, the insurance company involved (return receipt requested), and the applicant's attorney and shall keep a copy.

(b) The veterans' agent shall make every effort in workmen's compensation cases to assure that a copy of the assignment reaches the Industrial Accident Board before the applicant's claim comes before the Board for a hearing, in order that the Board, in reaching its decision, may take into account the benefits paid by the Commonwealth. The assignment of a workmen's compensation claim operates as a lien on any lump sum settlement and any accrued compensation payable to the applicant as a result of a decision of the Industrial Accident Board.

(c) In all workmen's compensation cases, the veterans' agent shall employ the following language in the portion of the assignment which identifies the responsible party, company, agency, or organization:

... in all claims and demands which I now have or at any time may have against the *William J. Smith Company and/or the Star Insurance Company* on account of accident or illness, in the nature of workmen's compensation, accident or health insurance, or otherwise ... said claims and demands ... in accident or health insurance cases, the veterans' agent shall substitute the name of the responsible agency or company for "William J. Smith Company and/ or the Star Insurance Company."

(d) In workmen's compensation cases, the veterans' agent shall employ the following language in the portion of the assignment which explains the basis for the financial proceeds or damages being assigned:

... said financial proceeds to be realized or financial damages to be recovered are predicated upon *an accident whereby I was injured while employed as a machinist at the plant of the said William J. Smith Company at Roxbury, Massachusetts, on or about June 14, 1970.*

(e) In accident or health insurance, the veterans' agent shall substitute the following sorts of language for the italicized language above:

*¼ an accident which occurred to me on or about June 14, 1970 whereby my leg was broken and I was prevented from following my usual or any occupation. I hold Policy No. 654321 in said Accident Protective Association, covering such accident*  
*¼ an illness which occurred to me on or about June 15, 1970, whereby I suffered pneumonia and was prevented from following my usual or any occupation.*

(4) Notification and Form of Assignment in Automobile Accident Cases.

(a) In cases involving automobile accidents, the veterans' agent shall send copies of the assignment to the Commissioner, the insurance company involved (return receipt requested), and the applicant's attorney and shall keep a copy for his or her own records. In addition, a copy of the accident report shall be sent to the Commissioner.

(b) In automobile accident and similar cases, the veterans' agent shall employ the following language in the portion of the assignment which identifies the responsible party or corporation:

... in all claims and demands which I now have or at any time may have against *The Star Trucking Corporation, a corporation duly established by law* on account of accident or illness in the nature of workmen's compensation, accident or health insurance or otherwise, or by legal responsibility of the aforesaid *The Star Trucking Corporation* as a tortfeasor and its insurer or guarantor, if any, said claims and demands ...

In cases where legal action is contemplated against both the master or owner ("Star Trucking Corporation" in the above example) *and* the servant, agent, or employee of that master (such as "William J. Jones," the driver of the other car involved in the accident), the veterans' agent shall take separate assignments against each of the two parties.

(c) In automobile accident and similar cases, the veterans' agent shall employ the following sort of language in the portion of the assignment which explains the basis for the financial proceeds or damages being assigned:

*... said financial proceeds to be realized or financial damages to be recovered are predicated upon an accident that occurred to me on or about June 15, 1970, at the corner of Broadway and Main Streets in the Town of Saugus when a car owned by the Star Trucking Corporation and driven by William J. Jones struck my car causing serious injuries to me and damages to my car.*

(5) Form of Assignment in Tort Action Cases. In tort action cases, the veterans' agent shall employ the following sort of language in the portion of the assignment which explains the basis for the financial proceeds or damages being assigned:

*¼an accident which occurred at Roxbury, Massachusetts, on  
or about June 15, 1970, whereby I was injured due to the  
negligence of the City Contracting Company, its Servants,  
Agents or Employees, by falling bricks.*

(6) Form of Assignment of Pension and/or Retirement Allowance. Assignments of pensions, annuities, or retirements shall be filed using the "Smithville" format on a form prescribed by the Commissioner.

(7) Designation of the Assignee. In the great majority of cases, the assignment shall be made to the veterans' agent, who thereby becomes the "assignee." In such cases, the language on the assignment form referring to the Commissioner as the assignee shall be stricken. In those rare cases where it is deemed appropriate that the Commissioner serve as assignee, the Department shall issue instructions regarding the form of assignment to be used.

(8) Settlement of the Assignment.

(a) In assignment cases where an offer is made to settle the applicant's claim, the veterans' agent shall consider all relevant facts and circumstances in deciding whether the offer is acceptable and shall make an appropriate written recommendation to the Department.

(b) The recommendation shall be accompanied by a report which states the reasons for the veterans' agent's recommendation, as well as the type of claim assigned and the amount of the proposed settlement, including all authorized deductions. The "authorized deductions" are those bills directly related to the assigned claim, such as physician and hospital charges, and attorneys' fees. Such deductions shall not include charges incurred before the date of the claim. The report shall indicate whether there has been any voluntary reduction of these charges by the parties involved. The report also shall mention any hardship factors present in the case.

(c) It is the general rule that full reimbursement shall be obtained in the settlement of assignment cases. However, in cases where full reimbursement is likely to create hardship, the veterans' agent may recommend, with the supporting evidence, that less than full reimbursement be accepted in settlement of the assigned claims. The recommendation of the veterans' agent shall not be implemented without the prior approval of the Department.

(9) Partial Discharge of the Assignment.

(a) The Department encourages the veterans' agent to negotiate the partial discharge of the assignment of an uncontested claim, in order that the applicant promptly may begin receiving benefits payments.

(b) The veterans' agent shall not negotiate the partial discharge of the assignment of a contested claim for workmen's compensation without the prior approval of the Department. The purpose of this requirement is to protect, on the Commonwealth's behalf, the significant sums of earned damages which frequently accumulate during the period of contest.

(c) In any cases where the fullest possible recovery of an assigned claim is not realized because of the failure or neglect of the veterans' agent to comply with the provisions of 108 CMR 6.00, the Department shall not provide reimbursement for benefits paid.

(10) Agreement to Reimburse. In cases where the applicant's need for veterans' benefits is a result of delay in the applicant's receiving payments from any source, the veterans' agent shall obtain from the applicant an "Agreement to Reimburse" to the city or town for veterans' benefits received while waiting for said payments. This agreement must be submitted by the veterans' agent properly dated and signed by both the applicant and the veterans' agent, when requesting authorization for the payment of benefits. An "Agreement to Reimburse" shall not apply in cases involving unemployment benefits that may be due to an applicant under M.G.L. c. 151A.

(11) Procedure. In all such cases, a Form VS-20A shall be executed and a copy of same forwarded to the Department when submitting a new application or a reapplication. If the possibility of benefits other than those received under M.G.L. c. 115, becomes available to applicants, after they have started to receive assistance, the veterans' agent must require the applicant to sign an agreement to reimburse. The DVS authorizer responsible for reviewing an agent's cases will not approve requests for reimbursement unless he or she receives a proper Form VS-20A on all such cases. Failure to execute a Form VS-20A , when in order, shall result in loss or reimbursement.

(12) Reimbursement of Benefits Received Under an Agreement to Reimburse.

(a) In cases where the applicant has received payment from any source, for which he or she has signed an agreement to reimburse, the veterans' agent shall seek reimbursement from the applicant in an amount not to exceed the amount of aid granted.

(b) If the applicant in such cases fails or is unwilling to make such reimbursement, the veterans' agent shall give the applicant written notification that the case henceforth shall be considered a "refund" case, subject to the procedures described in the refund section of 108 CMR 8.07. Failure of the veterans' agent to notify the veteran as here required will result in the dismissal of the refund proceeding, only where the veteran is prejudiced by such failure. If the refund proceeding is dismissed, the veterans' agent may bring the proceeding thereafter, noting notification as here required. The notification shall state the amount of the "refund" and give the reasons for the "refund." The veterans' agent shall send a copy of the notification, Notice of Reimbursed Funds (Form VS-20B)(Green Sheet), to the Department. The veterans' agent shall notify the Commissioner whenever the agent receives reimbursed funds from any source. The notification shall be made in a form prescribed by the Department. One form shall be completed for each case and no more than one name shall appear on each form.

REGULATORY AUTHORITY

108 CMR 6.00: M.G.L. c. 115.





**108 CMR 7.00: PAYMENTS TO APPLICANTS IN SPECIAL CIRCUMSTANCES**

**Section**

**7.01: Unemployed Applicants**

**7.02: Applicants Participating in a Substance Abuse or Other Rehabilitation Program**

**7.03: Applicants Attending School**

**7.04: Applicant's Absence from the Commonwealth**

**7.05: Emergency Services to Homeless Veterans**

**7.01: Unemployed Applicants**

(1) Causes of Unemployment. When an application for benefits is based upon need resulting primarily from the applicant's unemployment, the veterans' agent shall conduct an investigation of reasonable thoroughness to determine the causes of the unemployment. The investigation shall include contact with the applicant's last employer and with the state Department of Employment and Training (DET).

(2) Disqualification from Unemployment Benefits. The fact that the Department of Employment and Training (DET) disqualifies the applicant from receiving state unemployment benefits shall not, by itself, constitute a sufficient reason for disqualifying the unemployed applicant from receiving veterans' benefits.

(3) Development of an Employment Plan. The veterans' agent and the employable applicant shall develop an employment plan, and that employment plan should be submitted within 90 days of submission of the application (Form VS-1). The plan shall identify those efforts the applicant is required to take to find employment and shall include:

- (a) An employment history for the last two years.
- (b) The reason for present unemployment.
- (c) The number of weekly job searches required by the veterans' agent, and those job search lists shall be verified by the veterans' agent on at least a bi-weekly basis.
- (d) The name of any employment counseling agencies the applicant will be required to attend and the required frequency of such attendance.
- (e) The identity of any training programs or courses the applicant may need to find employment.
- (f) The types of networking efforts the applicant will undertake to find employment.
- (g) The veterans' agent's best estimate of when the applicant will be able to find employment with due consideration for the applicant's skills, age, health, financial circumstances, and job market conditions.
- (h) An applicant's failure to follow the employment plan may be cause to find the

applicant voluntarily unemployed as per 108 CMR 3.06(1)(b) and uncooperative as per 108 CMR 8.06(1).

(4) Employability of the Applicant. The veterans' agent shall deny further veterans' benefits payments to employable applicants who refuse, without good cause, to accept any bona fide offer of employment for which they are reasonably qualified based on their skills, training, physical condition and present circumstances. Notwithstanding the foregoing, applicants may be required to accept minimum wage employment.

(5) Unemployability for Medical Reasons.

(a) If an applicant claims to have left previous employment for medical reasons, the veterans' agent shall obtain from the applicant's physician a statement setting forth his or her diagnosis, prognosis, prescribed treatment and appraisal of the applicant's ability to work. Applicants may be required to undergo an independent evaluation by a doctor chosen by the Department. The veterans' agent also shall gather information from the applicant's former employer on the applicant's working conditions while employed.

(b) Unless prevented from doing so by medical reasons, the eligible employable applicant personally should pick up his or her veterans' benefits payments checks.

**7.02: Applicants Participating in a Substance Abuse or Other Rehabilitation Program**

(1) Veterans' Agents Handling of these Cases.

(a) The veterans' agent shall handle a benefits application from an applicant participating in a substance abuse or other rehabilitation program in the same manner as any other application. Prior to making a recommendation on benefits payments to the applicant, the veterans' agent shall discuss his or her substance abuse or other problem with the applicant. In substance abuse cases and before making a favorable recommendation, the veterans' agent shall have a reasonable belief that the applicant recognizes his or her substance abuse problem and has a sincere desire to be rehabilitated.

(b) On the basis of the veterans' agents initial favorable recommendation, benefits payments shall begin immediately and continue for a period of two months. At the end of that period, the veterans' agent shall review the case and make further recommendations. In the ongoing management of these cases, the veterans' agent shall bear in mind that the substance abuse or other rehabilitation process frequently is marked by repeated "false starts" which may require successive renewals of the applicant's benefits payments.

(c) The veterans' agent shall closely supervise cases involving applicants undergoing substance abuse rehabilitation. Once the applicant has been returned to good physical health, the veterans' agent shall encourage and assist the applicant in completing his or her rehabilitation through work with various social service and other assistance agencies.

(d) The veterans' agent shall endeavor to educate and familiarize himself or herself with the medical, social and emotional factors surrounding the problem of substance abuse, the other social services agencies which attempt to meet the special needs of substance abusers, and the particular facilities which offer substance abuser rehabilitation programs.

(2) Rehabilitation Facilities, Shelters, and Houses for Alcoholism, Substance Abuse, and Emotional Disorders. 108 CMR 7.02(2) is promulgated in connection with assistance to eligible applicants who become patients or residents in treatment or rehabilitation facilities, shelters, and houses.

(a) The Department is not authorized to make payment to any hospital for alcoholism for the treatment of a recipient who is an inpatient in such a hospital.

(b) If an eligible applicant becomes a patient or resident in such a facility, shelter, or house, aid may be granted to the applicant in accordance with provisions of the rules and regulations.

(c) The city or town in which the applicant resided immediately prior to his or her admission to a facility, shelter, or house shall be responsible for providing the financial

aid to such an eligible applicant.

(d) In the event that a facility, shelter, or house has not yet been assigned a rate, the Commissioner has established an interim rate of \$10.00 per day.

(e) The applicant's total income, less personal needs allowance, must be applied toward the total cost of the bill and the city or town in which the applicant resided immediately prior to his admission will be responsible for the balance.

(f) Benefits shall be determined in accordance with the transitional housing directive issued by the Commissioner.

### **7.03: Applicants Attending School**

(1) College or University. The Department shall not reimburse the payment of ordinary living expenses to an applicant who voluntarily removes himself or herself from the labor market in order to attend a regular course of instruction at a college or university. The Department may, in its discretion, reimburse the payment of such expenses, on a showing of need, pending the applicant's receipt of his or her first federal veterans assistance check, provided that the payments do not exceed the applicant's veterans assistance allowance. The Department shall consider payments for emergency medical expenses if a veteran has been determined eligible for a VA educational allowance.

(2) High School. In order to encourage an applicant to obtain a high school diploma, the Department may, in its discretion, reimburse necessary payments made to supplement the applicant's veterans assistance allowance. Whether or not such supplementation is provided, the Department shall consider payments for emergency medical expenses.

(3) Part-time Evening College. The veterans' agent shall handle the benefits application of an applicant attending part-time evening college in the same manner as an application by a regular applicant. If the applicant also is unemployed, the veterans' agent shall process the application according to the procedure set forth in 108 CMR 7.01. If the applicant terminated previous employment in order to attend part-time evening college, he or she shall be covered by the terms of 108 CMR 7.03(1).

#### **7.04: Applicant's Absence from the Commonwealth**

Temporary Absence. The veterans' agent shall not suspend the payment of benefits to an applicant until that applicant has been absent from the Commonwealth for longer than seven days. The applicant shall notify the veterans' agent upon departing from and returning to the Commonwealth for periods longer than seven days.

#### **7.05: Emergency Services to Homeless Veterans**

Homeless Veterans in Emergency Circumstances. In cases where a homeless person applies for assistance to a city or town Veterans' Services Department and states that he or she is a veteran as defined in M.G.L. c. 4, § 7, cl. 43, but does not have in his or her possession the supporting documents to prove his or her veteran status, the veterans' agent shall try to obtain as much corroborative information from the applicant as possible. If in the judgment of the veterans' agent, it appears that the applicant's claim of veteran status is credible and if the need for immediate assistance is extreme and critical, the veterans' agent may issue a voucher to obtain shelter and related necessities, rather than wait until the required documents are obtained. The veterans' agent shall inform the applicant that acceptance of the emergency grant shall not entitle the applicant to any additional payments unless the veterans' agent determines that the applicant is otherwise qualified for benefits pursuant to M.G.L. c. 115 and 108 CMR 7.00. The veterans' agent shall inform the applicant that in no event shall the emergency payment exceed one month's benefits. The veterans' agent must notify the Commissioner at the time of processing an emergency application or on the next business day.

REGULATORY AUTHORITY

108 CMR 7.00: M.G.L. c. 115.



**108 CMR 8.00: INVESTIGATIONS, APPEALS, TERMINATIONS, AND REFUNDS**

**Section**

**8.01: Investigations**

**8.02: Denial, Suspension, Termination, Changes of Benefits**

**8.03: Notice of Action**

**8.04: Payment Pending Appeal to Commissioner**

**8.05: General Rule for Cooperation**

**8.06: Grounds for Refund**

**8.07: Appeal Procedures**

**8.08: Payments Pending Appeal by Veterans' Agent**

**8.09: Enforcement of Commissioner's Decision**

**8.01: Investigations**

(1) Agent's Responsibility.

(a) In order to prevent the payment of unauthorized or unwarranted benefits, the veterans' agent has the legal responsibility to conduct periodic investigations into the applicant's eligibility and need for such benefits. The purpose of the investigation is to assess changes in the applicant's need for financial assistance, his or her own ability to meet those needs and his or her eligibility for veterans' benefits to help meet most of those needs.

(b) The veterans' agent shall not rely on information gathered by any other party in preparing recommendations on the continuation of benefits payments to the applicant. If the veterans' agent does rely on such information and it subsequently is determined that benefits have been paid contrary to statute or regulation, the Department shall not provide reimbursement for such payments.

(c) The veterans' agent shall conduct investigations which may result in disqualification of the applicant pursuant to M.G.L. c. 115, § 5, paragraph 3, with special thoroughness and attention to supporting data. Hearsay information on the applicant's reputation, or the unsupported opinion of the veterans' agent, shall not be sufficient basis for the disqualification of an applicant from receiving veterans' benefits.

(d) The Veterans' Agent shall respond to all inquiries from the Commissioner concerning the needs of the applicant, his or her work history or ability to work, his or her financial status, and any other information concerning the applicant's compliance with 108 CMR 8.00. Failure to respond in a timely manner may result in disallowance of benefits. The Commissioner may approve benefits contingent upon the veterans' agent responding to the Commissioner's request for information. Any failure to



respond within either a designated period or with the next regular submission of requests for authorization shall be deemed untimely. The veteran shall fully cooperate with the veterans' agent pursuant to the Commissioner's request for information.

(e) Within 180 days from the date of original appointment, a veterans' agent shall receive training and education in the proper administration of M.G.L. c. 115 and any laws, regulations and directives pertaining thereto. The Commissioner shall administer such training and education through a training course established by the Department.

(f) If a veterans' agent fails to attend such a course and obtain certification by the Commissioner, such agent will not be considered as a qualified veterans' agent under M.G.L. c. 115. Any request for reimbursement by a veterans' agent who has not been certified by the Commissioner may be cause for disallowance under the provisions of M.G.L. c. 115, § 6.

(2) Sources of Information.

(a) The Department of Public Health, Registry of Vital Records and Statistics, maintains a central repository of records concerning births, deaths and marriages within the Commonwealth. The veterans' agent may collect such information from that office, rather than contacting individual cities and towns.

(b) The War Records Section of the Adjutant General's Office maintains complete records on the military service of veterans whose place of residence was Massachusetts at the time of their enlistment. When an applicant does not have the necessary discharge or release document in his or her possession at the time of the application, the veterans' agent shall obtain the basic background details and then request a certificate of military service from the War Records Section. Other sources of military records are the VA Regional Offices and the Military Personnel Records Center in St. Louis, Missouri.

- (c) Records of divorce, separation, adoption and similar proceedings may be obtained from the Probate Court which had jurisdiction over the matter.
- (d) Information on an applicant's compliance with support orders may be obtained from the probation officer in the appropriate Probate and Family Court.
- (e) The veterans' agent, with the full cooperation of the applicant, shall obtain information on the wages or reasons for unemployment of an applicant from the applicant's employer. The veterans' agent also may obtain such information on wages earned by an applicant's spouse or children, provided that the spouse and children are members of the applicant's household. If obtaining a wage earner's report would jeopardize an individual's employment, the veterans' agent should obtain a copy of the employee's pay stubs from the applicant.
- (f) In accordance with M.G.L. c. 115, § 2, the veterans' agent has the authority to obtain information upon written request, regarding deposits or loans to the credit of an applicant from the Treasurer of the following institutions:
1. savings bank
  2. institution for savings
  3. national bank
  4. trust bank
  5. cooperative bank
  6. benefits association
  7. insurance company
  8. credit union
  9. safe deposit company
  10. savings and loan association (supervised by the Commissioner of Banks)
  11. federal savings and loan association
- (g) The applicant and/or spouse shall provide the veterans' agent with a waiver and/or authorization allowing release of the information referred to in 108 CMR 8.01(2)(a) through (f).
- (h) When the Commissioner disallows the payment of benefits due to the veterans' agent's failure to adequately or timely reply to the Commissioner's requests for information to establish eligibility or need, the Commissioner shall send a notice to the veterans' agent informing him or her of the reasons why benefits are not authorized or approved. Upon receipt of such a notice, the veterans' agent shall send the applicant or recipient a Notice of Action in accordance with 108 CMR 8.02. Upon receipt of such notice from the Commissioner, the veterans' agent shall not, unless the applicant or recipient appeals pursuant to 108 CMR 8.02, pay any benefits beyond the period through which payments were approved.

**8.02: Denial, Suspension, Termination, Changes of Benefits**

(1) When the veterans' agent denies, changes, or terminates benefits, he or she shall mail or deliver a Notice of Action to the applicant on a form prescribed by the Commissioner containing the following information:

- (a) the date the Notice of Action was mailed or delivered
- (b) the effective date of the denial, suspension, termination, or change in benefits
- (c) a statement of the intended action
- (d) the sufficient facts in support of every reason for the intended action
- (e) a reference to the regulation supporting such action
- (f) a statement of the right to request a fair hearing
- (g) the circumstances under which assistance is continued if a hearing is requested

(2) The Notice of Action shall be mailed or delivered as follows:

- (a) When the application for benefits has been denied, within 14 days following the completion of the application for benefits.
- (b) When benefits are to be terminated or changed, at least 14 days before the effective date of the intended action.

(3) The veterans' agent shall not deny an application or withhold benefit payments solely because of delays in the administrative or investigatory process.

(4) If the veterans' agent fails to provide the notification required in 108 CMR 8.02(1), the DVS staff member responsible for reviewing that agent's cases may, upon approval of the application, direct that benefits be paid to the applicant, pending investigation and possible appeal of the veterans' agent's decision.

(5) Whenever the veterans' agent determines that an application shall be approved, he or she shall promptly send written notification to the applicant on a Notice of Determination form prescribed by the Commissioner advising the applicant of the amount of benefits to be provided, the effective date, and the applicant's right of appeal if dissatisfied with the amount or the effective date of benefits.

### **8.03: Notice of Action**

(1) In all cases, whenever a veterans' agent makes a determination to deny, terminate or change the amount of benefits, a proper Notice of Action, in compliance with 108 CMR 8.02(2)(b) and with the date of issue and the effective date thereon, must be sent to every applicant.

(2) Particular attention should be given to the factual reasons for the action, and the particular type of regulation and/or law, on which the action is based. A defective Notice of Action which prejudices the veteran or dependent will require an amended Notice of Action and could delay the hearing date.

(3) In cases requiring more detailed explanation, a letter may be added to the Notice of Action and both are sent to the applicant and to the Commissioner.

(4) If, after submitting an original Notice of Action to an applicant or recipient, other facts, not included in the original Notice, come to the attention of the veterans' agent, a supplemental second Notice of Action shall be sent to the applicant and the Commissioner.

(5) Each Notice of Action or supplemental or amended Notice of Action shall be dated as of the date it is actually mailed or delivered to the applicant.

(6) When the veterans' agent terminates benefits for routine reasons such as the applicant's return to work, recovery from illness, and completion of medical treatment, the veterans' agent promptly shall notify the Department and make appropriate amendments to his or her existing form requests for reimbursement. This notice must be submitted on a Notice of Action form. Both the applicant and the Commissioner must receive a copy.

**8.04: Payment Pending Appeal to Commissioner**

(1) If an applicant whose benefits are to be terminated or changed files a proper and timely appeal to the Commissioner within 14 days of the date of mailing or delivery of the Notice of Action stating the specific facts supporting the reasons he or she objects to the proposed action and delivers or mails a copy to the veterans' agent within said 14 days, then benefits will continue until a hearing is held pursuant to 801 CMR 1.02 (Fair Hearing Regulations) and a decision is made by the Commissioner or his or her designee. Benefits will continue provided the applicant continues to meet all other requirements of eligibility including assets, income and residence and he or she has been afforded the opportunity for a hearing on such other issues. Any party aggrieved by the decision shall have the right of further review by filing a timely appeal with the Division of Administrative Law Appeals (DALA).

(2) The decision of the DVS hearing officer to uphold the reduction, termination or denial of benefits shall take effect in accordance with a written decision. An appeal to DALA shall not stay the decision unless the hearing officer grants a stay.

(3) Recovery of Payments Made Pending Appeal.

(a) If benefits are paid because the applicant appealed, and such appeal is denied, or if the Commissioner grants such an appeal and the decision is subsequently reversed by DALA, the Department may recover the amount of all benefits that were paid pending the outcome of the appeal.

(b) The applicant has the right to waive receipt of benefits pending appeal. Upon successful appeal, the applicant shall be paid the amount he or she would have received for the period pending the appeal.

(c) If the Commissioner decides to recover the amount of benefits paid pending appeal, his or her decision will include the amount of money owed by the applicant and a statement informing the applicant that the case will be subject to the provisions of 108 CMR 8.07(3).

(d) If a veterans' agent fails to pay benefits ordered in a decision following an appeal, the Commissioner shall request that the Treasurer of the Commonwealth be informed of such refusal or failure and thereafter such benefits shall be paid to the applicant by the Commonwealth. If the Commonwealth shall be called upon to pay such benefits on behalf of any city or town, the total of any such benefits paid in any such calendar year shall be assessed upon such city or town, or deducted from funds that may be due such city or town from the Commonwealth.

#### **8.05: General Rule for Cooperation**

(1) The applicant or recipient of benefits is required to reasonably cooperate with the veterans' agent and the Department in the processing of his or her application and maintaining his or her eligibility. Such cooperation shall include, but is not limited to, giving his signed consent for medical treatment, physical or mental examinations, power of attorney to examine VA records, court records, tax or financial records, and investigation of efforts to obtain employment. The veterans' agent shall determine what constitutes "reasonable cooperation" on the basis of the facts peculiar to each case.

(2) Where the veterans' agent feels that the applicant or recipient is not providing reasonable cooperation, he or she shall issue a written Notice of Intent that failure to cooperate may result in the suspension of benefits payment to the applicant. If the applicant or recipient persists in his or her failure to cooperate, the veterans' agent shall issue a Notice of Action.

#### **8.06: Grounds for Refund**

(1) The veterans' agent shall mark a case for "refund" and send the recipient a Notice of Action when the veterans' agent determines that there has been fraud or deceit. To determine fraud, there must be sufficient facts to find:

(a) the recipient knowingly or had reason to know that he or she misrepresented a material fact

(b) The veterans' agent reasonably relied upon the misrepresentation and granted

benefits to the recipient

(c) The recipient knew of or should have known of the falsity when he or she made the misrepresentation

In such cases, the recipient's amount of refund shall be determined as follows. If the recipient's unreported income is attributable to a period during which he or she received veterans' benefits, then the recipients ineligibility shall equal twice the number of benefit months necessary to receive an amount equal to the unreported income. See example following.

Example. Veteran receives M.G.L. c. 115 benefits of \$750 a month for three months, or a total of \$2,250. However, he or she failed to report \$500 of income he or she received in each of those months, for a total of \$1,500 in unreported income.

Therefore, his ineligibility equals twice the number of benefit months necessary to receive benefits which will equal the amount of unreported income of \$1,500, or two months of benefits. In this example, the number of benefit months necessary to receive an amount equal to \$1,500 is two, so the total ineligibility is twice that number, or four months.

(2) The veterans' agent shall also mark a case for "refund" and send the recipient a Notice of Action where the recipient fails to, or is unwilling to, honor personal agreements to reimburse pursuant to 108 CMR 6.04(10), or in all other cases, exclusive of fraud or deceit, as discussed above. In non-fraud cases, the recipient shall be entitled to the difference between what he or she would otherwise have received under the budget standards, 108 CMR 5.00, and the actual average monthly unreported income. See example following.

Example. If the veteran received \$500 of unreported income per month for two months and \$700 in veterans' benefits per month for each of those two months, then he or she has been overpaid \$1,000, or \$500 for each month. Consequently, in the following two months, he is entitled to only \$200 of M.G.L. c. 115 veterans' benefits and loses his or her right to the remaining \$500 each month. The veterans' agent may make some other arrangement mutually acceptable to the agent and DVS.

(3) When a case has been marked for "refund" for either misrepresentation, as in 108 CMR 8.07(1), or in all other cases, as in 108 CMR 8.07(2), the recipient shall be ineligible from receiving veterans' benefits from any city or town until either he or she has repaid the amount of the refund to the city or town which originally paid the recipient or he or she has arrived at a satisfactory agreement for repayment with the veterans' agent subject to the approval of the Commissioner. Said payments may be in the form of an offset against future veterans' benefits no matter where or when he or she applies for benefits. Even if a case has been marked for "refund", the recipient shall have the right to file an application for veterans' benefits.

(4) The veterans' agent shall mark a case for "refund" whether or not the recipient disputes the refund or the amount of the refund. If the recipient disputes the refund or the amount of the refund, then he or she is entitled to a hearing under 108 CMR 8.00, and he or she is entitled to payment of veterans' benefits, provided he or she continues to meet all other requirements of eligibility as required by 108 CMR 8.03(1) until a hearing has been held and a decision has been made. Even if the recipient does not dispute the refund, the veterans' agent must advise the recipient of his or her right to seek a waiver, in whole or in part, and must send the recipient a Waiver Advice Notice, on a form prescribed by the Commissioner, and suspend payment of benefits. The recipient shall request a waiver in accordance with the procedure following. :

(a) Within 14 days of notice of placement in refund status, the recipient shall file a written request for a waiver of all or part of the amount for which he or she is in refund with the veterans' agent. The recipient's request shall include reasons in support of the waiver and document any hardship.

(b) The veterans' agent shall forward the request within ten calendar days, along with his or her reasons as to why the waiver shall be granted or denied, to the Commissioner on a Form VS-21A with all documents attached. It shall be marked "PRIORITY - Waiver Request." The veterans' agent will take specific note of any extraordinary hardship the recipient has experienced or would experience.

(c) The Commissioner shall notify the veterans' agent of his decision in writing on the veterans' agent's copy of the Form VS-21A.

(d) If the waiver is denied and the recipient wishes to appeal his or her denial of the



waiver, the recipient may appeal within 14 days to the Department of Veterans' Services appeals section.

(5) Refund status shall be removed upon repayment of the total amount due to the local veterans' services department or if a request for waiver is approved by the Commissioner.

(6) The effective date of the refund is the date the recipient receives the Notice of Action that he or she is in refund status. Benefits shall continue until the time for filing the appeal has elapsed, that is within ten days of receipt of the Notice of Action, provided the recipient continues to meet all other requirements of eligibility as required by 108 CMR 8.03(1).

#### **8.07: Appeal Procedures**

(1) An applicant, or authorized representative, may appeal any action taken by a veterans' agent by filing a proper and timely appeal, within 14 days of the date of the mailing or delivery of the Notice of Action, to the Commissioner. Said applicant will request an appeal to the Commissioner in a letter signed by the applicant or authorized representative, and may also include any documents or information in support of such appeal.

(2) When DVS receives an appeal, the clerk of the appeals section shall date stamp the letter and docket the appeal.

(3) The clerk shall send a letter of acknowledgment to the applicant and a copy of the letter to the veterans' agent.

(4) The Hearing Officer shall conduct a hearing and report his or her decision, in writing, to the applicant and the veterans' agent. The applicant and veterans' agent shall be notified that the aggrieved party may further appeal, in writing, to the Division of Administrative Law Appeals by filing an appeal within ten days of the receipt of the decision.

(5) Any party may, with or without supporting affidavits, file a request for summary decision in his or her favor as to all or part of a matter. Such a request shall be called and acted upon as a motion. The motion may be made in writing at any time after issuance of a Notice of Action or it may be made orally during a hearing. A copy of the motion shall be mailed to the opposing party. The motion shall set forth the grounds for the proposed summary decision. Any time within seven days after a written motion is filed, any party may file written objections with or without supporting affidavits to the allowance of the motion and may, if desired, request a hearing. A copy of the written objections shall be mailed to the opposing party. The motion shall be allowed if the hearing officer finds there is no controversy as to any material fact.

(6) In the case of an appeal of the denial of benefits by an applicant to the Division of Administrative Law Appeals, the veterans' agent shall provide financial assistance to the applicant, in an amount not to exceed the actual cost of public transportation to the place of the hearing. In the case of an appeal of the termination or reduction of benefits to the Division of Administrative Law Appeals, the veterans agent may, in cases of extreme financial hardship, provide financial assistance to the applicant in an amount not to exceed the actual cost of public transportation to the place of the hearing.

(7) Further review of the decision of the Division of Administrative Law Appeals may be had by any party upon written application to the Governor and Council within ten days after his or her receipt of notice of the decision. Whether or not an application for further review is made to the Governor and Council, the decision of the Division of Administrative Law Appeals or the decision of the Governor and Council shall be subject to judicial review in accordance with the provisions of M.G.L. c. 30A.

(8) The hearing officer may find against any party who, without good cause, fails to appear at the hearing or defend his or her action or claim.

**8.08: Payments Pending Appeal by Veterans' Agent**

(1) If a veterans' agent appeals the hearing officer's decision , requiring him or her to make benefits payments, the veterans' agent shall make the payments in accordance with a written decision of the hearing officer pending the DALA appeal. If the agent's appeal is granted, the Department shall reimburse in full for payments made.

(2) If the hearing officer's decision terminates or suspends veterans' benefits and the veterans' agent continues to pay such benefits pending appeal to DALA, notwithstanding the hearing officer's decision to the contrary, and the decision of the hearing officer is upheld by DALA, no reimbursement by the Department will be made.

**8.09: Enforcement of Commissioner's Decision**

The Commissioner may, by written notice, order a city or town to pay veterans' benefits to an applicant on an application approved by the Commissioner. If a city or town refuses or does not make such payment within 14 days from receipt of such notice, the Commissioner shall notify the State Treasurer of such refusal or failure and thereafter such benefits shall be paid to the applicant by the Commonwealth. If the Commonwealth shall be called upon to pay any such benefits on behalf of any such city or town, the total of any such benefits paid in any such calendar year shall be assessed upon such city or town or deducted from funds that may be due such city or town from the Commonwealth.

REGULATORY AUTHORITY

108 CMR 8.00: M.G.L. c. 115.



**108 CMR 9.00: ANNUITIES AND BURIALS**

**Section**

**9.01: Annuities**

**9.02: Burial Allowance**

**9.01: Annuities**

(1) Eligibility for Annuity Benefit. An applicant veteran who satisfies the following prerequisites shall be eligible to receive a special benefit payment in the form of an annuity.

- (a) Is a resident of Massachusetts.
- (b) Meets one of the service time requirements set forth in 108 CMR 3.03, or has served on active duty in the Armed Forces of the United States for a period of at least 180 days.
- (c) Has received any discharge from military service other than a dishonorable discharge
- (d) Meets the requirements for blindness, paraplegia, double amputation or other disability set forth in M.G.L. c. 115, § 6B as so certified by the Department of Veterans Affairs. Proof of service and disability shall be furnished to the Commissioner as per M.G.L. c. 115, § 6C.
- (e) Is otherwise determined to be 100% disabled as so certified by the Department of Veterans Affairs.
- (f) Is a parent of a deceased member of the Armed Forces of the United States, whose death occurred as a result of injury sustained or disease contracted during active service in time of war or insurrection or combat as set forth in 108 CMR 3.03, shall be eligible to receive a special benefit payment in the form of an annuity. The provisions of 108 CMR 9.01(1)(a), (c), and (d) apply to the deceased member whose status forms the basis for the application.

(2) Application Procedure for Annuity Benefit. Whenever a veterans' agent learns, or has reason to believe, that an applicant veteran may be eligible for this annuity, the veterans' agent shall notify the Department, which in turn shall provide the veterans' agent with the necessary application forms and advise him or her on processing procedures. The annuity benefit available under 108 CMR 9.00 is paid directly to the applicant veteran by the Office of the Treasurer and Receiver-General of the Commonwealth on a warrant from the Comptroller. The applicable annuity is paid in two equal installments, one-half in January and one-half in July of each year.

- (3) An applicant denied an annuity may appeal to the DVS Annuity Appeal Board within 30 days of notice of denial.

**9.02: Burial Allowance**

(1) Eligibility.

(a) A veterans' agent shall grant a special allowance for the burial of veterans and adult dependents of veterans who die without sufficient means to defray the funeral expenses, and for the burial of dependent children of a veteran if the veteran and his or her spouse, or his or her surviving spouse alone do not have sufficient means to defray funeral expenses. The veteran in whose name the burial allowance is sought shall have satisfied the military service requirements set forth in 108 CMR 3.03.

(b) In addition to the veterans in whose name burial allowances are sought pursuant to 108 CMR 9.02(1)(a), an allowance also shall be granted for the burial of the following persons:

1. A person who served in the Massachusetts State Guard between April 5, 1917 and December 21, 1917 and was honorably discharged from such service; or
2. A person who served in the Massachusetts State Guard established during World War II and was honorably discharged from such service; and
3. Who died without sufficient means to defray funeral expenses. An allowance shall not be granted for the burial of dependents of the persons described in this subsection.

(c) A veterans' agent shall not grant a burial allowance to or for the following persons:

1. A person who, at the time of entering U.S. military service, was a subject or citizen of a neutral country who had filed his intention to become a citizen of the United States but who later withdrew that intention under the act of Congress approved July 9, 1918
2. A person designated on his or her discharge papers as a conscientious objector.

(2) Amount of Burial Allowance. A veterans' agent shall grant a burial allowance only if the total cost of the burial does not exceed certain limits, and any and all resources have been utilized to defray the cost of the burial. The amount of the burial allowance shall be \$2,000 and the ceiling on the total cost shall be \$3,000.

(3) Application Procedure.

(a) Within 60 days of the date of death, the veterans' agent shall file with the Commissioner a burial allowance application (Form VS-9) which includes a copy of the discharge papers of the veteran in whose name the allowance is sought, a copy of the deceased veteran's death certificate, an itemized bill from the undertaker, and, where appropriate, a copy of a birth or marriage certificate to establish the relationship between the deceased and the applicant. Within three months after the date of death, the burial agent and the treasurer of the appropriate city or town shall certify to the Commissioner, on a Form VS-10, Return of Expense, the amount expended on the burial. An application for burial allowance shall not be charged on monthly returns to the Department which pertain to other types of benefits.

(b) The Department shall provide reimbursement for 75% of the amount paid by a city or town as burial allowances.

REGULATORY AUTHORITY

108 CMR 9.00: M.G.L. c. 115.



**108 CMR 10.00: MEDICAL CARE**

**Section**

- 10.01: Purpose**
- 10.02: Fee Schedules**
- 10.03: Prohibition of Charges to Recipients**
- 10.04: Eligibility**
- 10.05: Community Resources, Alternative Sources for Medical Care and Prescription Drugs**
- 10.06: Rehabilitation**
- 10.07: Home Health Aid Services**
- 10.08: Visiting Nurse Service**
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- 10.10: Payment of Bill**
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- 10.12: Retroactive Rate Adjustments**
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- 10.14: Hospital Health Insurance**
- 10.15: Hospital Billing with Insurance**
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- 10.17: Supplement Payment to Insurance Prohibited**
- 10.18: Inpatient Days Disallowed by Medicare**
- 10.19: Physicians Services, Exclusion and Exceptions**
- 10.20: Dental Services**
- 10.21: Prescribed Drugs**
- 10.22: Responsibility of the Veterans' Agent**
- 10.23: Procedures for Authorization**
- 10.24: Podiatry Service**
- 10.25: Chiropractic Service**
- 10.26: Policy Regarding Psychiatric Care**
- 10.27: Special Review: Appeals**
- 10.28: Medical Consultant**
- 10.29: Provider Request for Reconsideration of Payment**

**10.01: Purpose**

Medical care is a basic requirement of persons in need, and shall be provided in accordance with the standards and limitations of 114.3 CMR which embodies the policies, procedures and standards relating to administration of the medical care aspects of the public assistance programs in the Commonwealth of Massachusetts. It is a guide to assure adequate provisions necessary to promote satisfactory growth, development, and protection of the health of children and adults; promote prevention of disease, early detection, treatment, remedial care and rehabilitation; and provide essential drugs, appliances and equipment for persons in need within the scope of assistance programs. In the event of discrepancies or conflicts between 108 CMR 10.00 and any other chapter, the provisions of 108 CMR 10.00 shall apply.

**10.02: Fee Schedules**

In order to achieve uniformity throughout the state in the quantity and quality of medical care provided, it is necessary that local veterans' services departments conform to the procedures, methods of payment and statewide fee schedules. Medical services and supplies begin with either the personal physician or clinic and, when recommended, must be approved and paid for in accordance with established fee schedules. Fee schedules for medical services and supplies are part of 114.3 CMR and generally represent rates as established by the Division of Health Care Finance and Policy (DHCFP), formerly the Massachusetts Rate Setting Commission. Established fee schedules for professional services may not be exceeded. A veterans' agent must refer medical fees requiring "individual consideration" and fees for medical services not on fee schedules to the Department.

Items of medical care must be recommended in accordance with standards outlined in 114.3 CMR. Most items require evaluation and recommendation of the attending physician. In some instances, the professional opinion of a specialist or clinical physician is required; in others, the assessment by a specialized agency such as a hearing evaluation center for a hearing aid or a physical therapist for a wheelchair will be required. A veterans' agent may approve purchase of recommended items of medical care only when the standards of 114.3 CMR have been satisfied.

### **10.03: Prohibition of Charges to Recipients**

M.G.L. c. 6A, § 35 states, "Any provider of health care services which receives reimbursement or payment from any governmental unit for general health supplies or services shall accept reimbursement or payment at the rate established by the DHCFP as payment in full.

### **10.04: Eligibility**

The definitions and methods of determining reimbursements contained in 108 CMR 10.04 are regulations promulgated by the DHCFP and have been adopted by this Department. All fee schedules that are changed and promulgated by the DHCFP will be sent to all veterans' agents as the changes occur. It is expected that they will be filed properly for referral.

(1) Unlimited Medical Benefits. Medical services for eligible veterans and their dependents who are unemployable, permanently disabled, in receipt of Social Security, VA pension, or other retirement pensions shall be entitled to all medical benefits that are currently included in 114.3 CMR.

(2) Limited Medical Benefits. Medical services for eligible veterans and their dependents who are in receipt of ordinary benefits because of unemployment or illness, who are expected to return to employment, shall be limited to emergency cases or cases of elimination of pain. All other cases considered medically essential require prior approval by the Commissioner.

(3) Excessive Medical Costs. See 108 CMR 5.02(18), *Medical Expenses*.

### **10.05: Community Resources, Alternative Sources for Medical Care and Prescription Drugs**

All community resources, both public and private, should be used both for the prevention of disease and treatment of illness. Procedures for the use of these health services should be carefully planned so that all agencies concerned, as well as recipients involved, will understand the purpose of the services and the method of obtaining them. If these services are not readily available in a particular city or town, adjacent communities should be utilized. An applicant who is a veteran shall agree to utilize alternative sources of medical care and prescription drugs such as Department of Veterans Affairs Medical Centers, Outpatient Clinics and the Soldiers' Homes in Chelsea and Holyoke as a prerequisite of eligibility to receive medical care as provided in 108 CMR 10.00. Any co-payment or fees assessed the veteran by these facilities for medical care or prescription drugs are to be reimbursed to the veteran. The provisions of 108 CMR 10.05 shall not apply when it would be unreasonable for the veteran due to age, physical condition or distances involved in traveling to utilize such alternative sources.

### **10.06: Rehabilitation**

The use of all possible rehabilitation facilities is the responsibility of the veterans' agent. These facilities include the available rehabilitation clinics, the services of the Massachusetts Rehabilitation Commission, shelter workshops, and other agencies providing services, such as the Bay State Society for Crippled and Handicapped, and the Crippled Children's Program of the State Department of Public Health. The Directory of Social Services Resources in Massachusetts lists all agencies providing services.

**10.07: Home Health Aid Services**

There are various types of home help available to assist recipients in maintaining their own homes. When the specified need is identified as a component of a medical treatment plan, home health aid services may be provided when properly authorized by the Department. Prior approval is needed. The rate of payments for homemaker or home health aid services to recipients of veterans' benefits, to eligible providers, are subject to the rates established by the DHCFP.

**10.08: Visiting Nurse Service**

Services of visiting nurses associations shall be provided by veterans' agents to recipients whenever bedside nursing is required and cannot be furnished by members of the family. This service is permitted only on a recommendation by a physician. The physician must submit to the veterans' agent the plan of treatment, such as, treatment needed, amount of time involved and projected number of visits needed to complete the treatment plan. The rate of payments to eligible providers are subject to the rates established by the DHCFP.

**10.09: Nursing Home Care**

When eligible applicants are recommended for care in a nursing home by the attending physician, or the hospital, the veterans' agent should process an application (Form VS-1) and submit it to the Department with his or her recommendation. The veterans' agent must also verify that the nursing home is properly licensed and verify the per diem rate as set by the DHCFP. The veterans' agent shall assist eligible patients in filing for all possible available resources pursuant to 108 CMR 6.01(3). Particular attention must be paid to those patients who are in receipt of VA pensions. The Department's offices in Boston and in Providence should be utilized to file for additional benefits, such as aid and attendance, medical, etc.

**10.10: Payment of Bill**

The total monthly income of the patient, with the exception of an allowance for personal needs, must be applied toward payment of the nursing home bill. The balance will be paid by the veterans' agent at the state approved *per diem* rate.

**10.11: Personal Needs**

The patient's personal needs allowance shall not be used to purchase items included in the per diem rate set by the DHCFP for the facility. Maximum accumulated personal needs benefits are subject to the provisions of 108 CMR 5.02(17).

**10.12: Retroactive Rate Adjustments**

Retroactive rate adjustments are necessary whenever the DHCFP certifies a new interim or final rate for a long-term care facility. When there is a retroactive increase, the Department incurs a liability to the provider. When there is a retroactive decrease, the provider must repay the Department.

**10.13: Temporary Absence from Nursing Home for Medical Reasons**

The Department will reimburse for temporary absence for patients in nursing homes for a total of 30 days when the patient is absent from the facility for medical reasons.

**10.14: Hospital Health Insurance**

When a veterans' agent notes on page three of an application form (Form VS-1), that the person applying for assistance under this program has some type of hospital insurance, he or she must properly submit the following information:

- |                               |                                 |
|-------------------------------|---------------------------------|
| 1. Name of company            | a. Regular insurance plan       |
| 2. Persons covered under plan | b. Master Medical plan (MM)     |
| 3. Full details of plan       | c. Unlimited Medical plan (UMC) |
|                               | d. Prolonged Illness plan (PIC) |

### **10.15: Hospital Billing with Insurance**

INPATIENT HOSPITAL BILLING  
If applicant eligible, bill must show:  
Total amount of charges  
X percentage of charges  
Total public assistance bill  
minus insurance payment  
Balance - paid by Department

OUTPATIENT HOSPITAL BILLING  
If applicant eligible, bill must show:  
Total amount of charges  
X percentage of charges  
Total public assistance bill  
minus insurance payment  
Balance - paid by Department

### **10.16: Physicians Payments**

- (1) If applicant is eligible, bills must be addressed to the veterans' agent, and services must be coded according to the Division of Health Care Finance and Policy (114.3 CMR).
- (2) A veterans' agent must not submit a request for reimbursement for services provided by a physician or vendor when health insurance is in force, until proof, in writing, is received from the insurance company that the request for payment has been approved or disapproved. This written proof must be submitted to the DVS authorizer responsible for reviewing the veterans' agent's cases with each request for reimbursement. Requests will not be approved without it.

### **10.17: Supplement Payment to Insurance Prohibited**

- (1) Applicants Not Covered by Medicare. The Department will not allow payment for services performed by a physician in cases where the applicant has medical insurance and that insurance has made payment. Payment by the insurance company means the bill is paid in full.
- (2) Applicants Covered by Medicare - Part B Supplemental Insurance. The Department will not authorize payment to any physician for services performed to an eligible applicant who is covered under Medicare B and also has supplemental insurance. This policy applies only to physicians and does not affect other providers of medical care under Part B of Medicare. The Department will continue to participate in the payment of Medex premiums and other supplemental insurance plans. For those applicants without supplemental insurance, the Department will continue to pay the deductibles and the 20% balance of the allowable rate pursuant to M.G.L. c. 112 § 2.

### **10.18: Inpatient Days Disallowed by Medicare**

In those instances where inpatient payment has been denied by Medicare as medically unnecessary, no payment will be authorized by the Department.

### **10.19: Physicians Services, Exclusion and Exceptions**

Regulations and fees for payment shall not apply to the rates of payment to physicians for medical, surgical, anesthesia and X-ray services provided in state institutions by state-employed physicians or physician consultants in state hospitals. Also, regulations and fees for payment shall not apply to:

- (1) Physicians whose contractual arrangements with hospitals and/or affiliated medical schools involve a salary, compensation in kind, teaching research or payment from any other source resulting in dual compensation for professional, supervisory or administrative services related to patient care.
- (2) Physicians who serve as interns, residents, fellows or house officers.
- (3) Physicians who serve as attending, visiting, or supervisory physicians in a hospital, if any of the following conditions exists:
  - (a) the physician does not customarily bill private patients without insurance under comparable circumstances

(b) the physician is not legally responsible for, or the physician does not control management of the patient's case with respect to medical, surgical anesthesia or X-ray services

- (c) the physician does not perform the medical, surgical, anesthesia or X-ray services
- (d) the physician does not meet the Department's conditions of participation for physicians

#### **10.20: Dental Services**

Dental treatment is an essential of medical care. The Department will reimburse for necessary dental services for eligible recipients. It is not within the scope of this program to provide elective or cosmetic services which are non-essential to the maintenance of oral health. Prior approval must be requested in conjunction with the total treatment plan for all dental services other than basic restorative or prophylactic services.

#### **10.21: Prescribed Drugs**

By 114.3 CMR 31.00, the DHCFP determines the rates of payments to be used by the Department for prescribed drugs dispensed to eligible recipients of veterans' benefits. The rates of payment represent full compensation for professional services rendered, as well as for any related administrative or supervisory duties.

#### **10.22: Responsibility of the Veterans' Agent**

The veterans' agent shall take all necessary steps to assure that the Notice of Determination is completely filled out and shall explain the proper procedures which must be followed in order to receive prescribed drugs.

#### **10.23: Procedures for Authorization**

(1) The veterans' agents should inform druggists in their area that billing should be on a monthly basis in triplicate to the veterans' agent; and bills should clearly state:

- (a) name and address of the recipient
- (b) number of the prescription (identity)
- (c) type, quantity, dosage of the medicine, and date filled
- (d) number of refills
- (e) when it is for a refill, it must state which refill of the original prescription it covers: "Third of Five": *etc.*

When an original prescription is filled, a copy of the original prescription shall be attached to the bill and submitted to the Department.

(2) In cases where the veterans' agent is in doubt, he or she should make a written request to the Director of Operations, Department of Veterans' Services for a review by the State Surgeon as to the propriety of the medication as it relates to the illness.

#### **10.24: Podiatry Service**

(1) Reimbursement for Essential Services. The Department will reimburse for podiatric services essential for the prevention and treatment of disease. It is not the intent of the program to provide cosmetic or unnecessary services. Podiatric services will not be approved without a statement of medical necessity from a physician.

(2) Number of Allowed Visits. Recipients will be allowed one visit per month. Other service must be documented, including diagnosis, and description of treatment plan, and reviewed by the Department's medical consultant. Procedures for specific problems which require surgery, either in the podiatrist's office or in a hospital, shall be referred to a medical consultant.

(3) Podiatric Referral Responsibility in a Clinic, Office or Hospital Outpatient Department. When, during an examination, a podiatrist discovers a debilitating disease (such as diabetes mellitus or ischemia caused by circulatory deficiency, the podiatrist must refer the

patient to a physician. The patient's record must include documented communication between the physician and podiatrist relative to the patient's medical condition. All podiatric services require prior approval.



**10.25: Chiropractic Service**

Chiropractic service requires prior approval. Chiropractic services will not be approved without a statement of medical necessity from a physician.

**10.26: Policy Regarding Psychiatric Care**

The Department will not participate in the payment for services related to mental health. All problems relating to mental health are the responsibility, by law, of the Commissioner of Mental Health. Transient (short term) acute psychiatric episodes associated with a physical disease process, may be submitted to the DVS authorizer responsible for reviewing the veterans' agent's cases for consideration. Applications for benefits in such cases must include a medical report from a physician fully explaining the circumstances and the need for short term psychiatric care.

**10.27: Special Review: Appeals**

When the physician provider believes that circumstances warrant special consideration and review by the Department's medical consultant, he or she should enclose a written request to this effect, accompanied by pertinent documents. This request for review should be sent to the Department. Any claims for surgical procedures not listed in the fee schedule should also be sent to the medical consultant, via the Department, for review.

**i 10.28: Medical Consultant**

The following types of bills always require the medical consultant's approval before payment can be made:

- (1) a bill which contains an individual consideration fee for an allowed service not listed on the fee schedule
- (2) a bill which is unclear, questionable, unusual or requiring interpretation
- (3) where there is a question that the type of care or treatment is not medically necessary

**10.29: Provider Request for Reconsideration of Payment**

- (1) If a provider is dissatisfied with the payment received or allowed by the medical consultant, reconsideration of payment will be made:
  - (a) when the disallowance was applied because of professional review for procedures designated on the fee schedule as individual consideration items
  - (b) when the disallowance was applied for administration reasons including nonconformance with 114.3 CMR program policy.
- (2) Providers requesting reconsideration must submit their request in writing, and include any supportive medical documents to the medical consultant.

REGULATORY AUTHORITY

108 CMR 10.00: M.G.L. c. 115.

**108 CMR 11:00 PERSIAN GULF WAR BONUS UNDER St. 1992, c. 153**

**Section**

**11.01: Determination of Eligibility**

**11.02: Definition of the Term "Armed Forces"**

**11.03: Application Procedures**

**11.04: General Provisions**

**11.05: Penalty Provision**

**11.01: Determination of Eligibility**

(1) Military Service, Massachusetts Domicile Requirements. Upon application, as hereinafter provided, there shall be allowed and paid by the Commissioner the payment of a bonus to Persian Gulf War veterans of Operations Desert Shield and Desert Storm who shall have performed active service in the Armed Forces of the United States for a period of 30 days or more during the period of August 2, 1990 to April 11, 1991 and who were released from active service or discharged under honorable conditions from such service the sum hereafter specified; provided, however, that the domicile of every person on account of whose service the application is filed shall be in the Commonwealth. Any such Persian Gulf War veteran who served in said Armed Forces during the period specified in 108 CMR 11.01(1) and was awarded a service-connected disability by the United States Department of Veterans Affairs or a Purple Heart, or who died in said service under conditions other than dishonorable, shall be deemed eligible for the payments provided for in 108 CMR 11.00 notwithstanding his or her failure to complete 30 days of active service.

(2) Payment of Bonus, Eligibility.

(a) \$500 to each such Persian Gulf War veteran who performed active service in the Persian Gulf area in Operations Desert Shield and Desert Storm and is in receipt of the Southwest Asia Service Medal established by executive order of the President on March 13, 1991;

(b) \$300 to all other such Persian Gulf veterans who were called to active service in support of said operations as members of the Army National Guard or Air National Guard or as a reservist in the Armed Forces of the United States and served in an area other than the Persian Gulf area.

**11.02: Definition of the Term "Armed Forces"**

(1) The words "Armed Forces", as used in 108 CMR 11.00, shall mean the following:

United States Army, United States Army Reserve, Army National Guard, United States Marine Corps, United States Marine Corps Reserve, United States Navy, United States Navy Reserve, United States Air Force, United States Air Force Reserve, Air National Guard, United States Coast Guard, and United States Coast Guard Reserve.

(2) "Active service in the Armed Forces", as used in 108 CMR 11.00 shall not include active duty for training in the Army National Guard or Air National Guard or active duty for training as a reservist in the Armed Forces of the United States.

### **11.03: Application Procedures**

Applications hereunder shall be filed with the Commissioner of Veterans' Services, upon forms to be furnished by him or her. The Commissioner may accept the written statement of the clerk of a city or town that a person claiming pay or on whose account pay is claimed or on whose account pay is claimed by a dependent or heir-at-law, under the provisions of 108 CMR 11.00, was domiciled therein on the first day of January, 1990 or 1991 as *prima facie* evidence of domicile, and he or she may accept such other evidence of domicile as he or she may consider adequate or necessary. The clerks of the several cities and towns shall, at the request of the Commissioner, forthwith furnish such information relative to such domicile as their records may disclose. The Commissioner may require and accept such additional evidence as he or she may consider necessary to establish the fact of domicile within the Commonwealth as provided for under the provisions of 108 CMR 11.01(1).

**11.04: General Provisions**

(1) In the case of the decease of any person who would, if alive, be entitled to the benefits of 108 CMR 11.00, the sum named therein shall be paid to his or her heirs-at-law, provided, however, that if there is more than one heir-at-law; payments shall in either case be made in such proportions as the Commissioner shall determine, and in determining the order of precedence so far as practicable the following order shall be observed: -- wife and children, mother or father, brother or sister, other dependents; provided, however, that no right or payment under 108 CMR 11.00 shall be subject to the claims of creditors, capable of assignment, regarded as assets, legal or equitable, of the estate of the deceased or made the basis for administration thereof.

(2) In the case of the decease of any person who died while in active service as specified in 108 CMR 11.01(1), there shall be paid the sum of \$500.00 subject to, and in the manner provided by, 108 CMR 11.04(1).

(3) In the case of any person who is mentally incompetent and is entitled to the benefits of 108 CMR 11.00 and for whom no legal guardian has been appointed by the court, the sum named therein shall be paid to his or her dependents, and in determining the order of precedence so far as practicable the following order shall be observed: -- wife and children, mother or father, brother or sister, other dependents.

(4) Any person aggrieved by a decision of the Commissioner in the matter of payments provided for by 108 CMR 11.00 may appeal to a board to consist of a member of the Department, a city or town veterans' agent appointed pursuant to the provisions of M.G.L. c. 115, § 3, both of whom shall be designated by the Commissioner, and the Adjutant General or his or her designee, and shall be entitled to a hearing, after due notice, upon such appeal. The decision of such board shall be final. Such appeal shall be in writing and addressed to the Persian Gulf War Bonus Appeal Board, 100 Cambridge Street, Room 1002, Boston, MA 02202 and must be received within 30 days of the receipt of the Commissioner's decision.

**11.05: Penalty Provision**

Whoever knowingly makes a false statement, oral or written, relating to a material fact in supporting a claim under the provisions of 108 CMR 11.00 shall be punished by a fine of not more than \$1,000.00, or by imprisonment for not more than three years, or both. Offenses under 108 CMR 11.05 may be prosecuted by the Attorney General, or under his or her direction, in any court within the Commonwealth, and all fines collected thereunder shall be paid into the Treasury of the Commonwealth.

108 CMR: DEPARTMENT OF VETERANS' SERVICES

REGULATORY AUTHORITY

108 CMR 11.00: St. 1992, c. 153.